Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

ALEXANDER SALKIND,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

Real Parties-in-Interest Jane Chaplin, Ilya Salkind and Robert Simmonds

Petition For A Writ Of Certiorari To The Supreme Court For The State Of California

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

A. Whether California's procedures that allow Petitioner, a non-resident defendant, to specially appear in the state trial court to object to the exercise of personal jurisdiction, but which condition Petitioner's appeal as of right of the trial court's exercise of personal jurisdiction upon waiver of the right to litigate the merits of the action and suffer entry of a default judgment on the merits, and which deny to Petitioner the right of interlocutory appeal of the exercise of personal jurisdiction, violate the Equal Protection Clause and the Due Process Clause by arbitrarily and capriciously discriminating against Petitioner and other non-resident defendants who challenge the personal jurisdiction of the California State courts and by imposing an unreasonable and arbitrary burden upon Petitioner's right to appeal.

B. Whether the California trial court's application of the "continuous and systematic" forum contacts rule (the "Rule") to support general personal jurisdiction over Petitioner, an individual, with respect to matters unrelated to any of Petitioner's contacts with the forum, violated the Due Process Clause because the Rule can be applied only to corporations, and, if the Rule can be applied to Petitioner, whether its application to Petitioner denied him due process, where the application of the Rule was the only basis for exercise of general jurisdiction and no determination was made if the exercise of general jurisdiction offended traditional notions of fair play and substantial justice in an action brought in California by three other non-U.S. citizens and non-California residents and domiciliaries, with respect to causes of action arising out of acts done, and contracts made, outside of California, which contracts were not performed nor

QUESTIONS PRESENTED – Continued

breached in California, and resulted in no damages within California and where Petitioner is a non-U.S. citizen, and is not a resident, domiciliary or citizen of California or any other State; Petitioner has not consented to personal jurisdiction; Petitioner was last briefly in California in 1947; and Petitioner has no office in California.

II. PARTIES TO PROCEEDING

In addition to the Petitioner and Respondent Court named in the caption above, the following entities and individuals are parties to the ongoing proceedings below: Plaintiffs Jane Chaplin ("Chaplin"), Ilya Salkind ("Ilya"), and Robert Simmonds ("Simmonds") are real parties-in-interest in the proceedings below; three Swiss citizens and residents, Bruno Hoefler, Pueblo Film Consultancy, A.G., and Pueblo Film Distribution, A.G. are defendants in the proceedings below.[1]

Because the constitutionality of California statutes are drawn into question by the Petition, the provisions of 28 U.S.C. § 2403(b) may be applicable and Petitioner shall serve this Petition on the Attorney General of California. Rules of the Supreme Court, Rules 29.4(c).

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[1] The following defendants have been dismissed from the action below: Peel Enterprises, Rando Film, Collette Gruenbaun Flurry, Yvonne Frenzel, George Lanyon, Edward Linggi, and Werner Wenger. Defaults have been requested by real parties-in-interest against the following named defendants: Atalanta Films Intl. B.V., Calash Corp., Cantharus Prod. N.V., Carlisle, Inc., Christopher Columbus Prod. N.V., D.D.S. Film Corp., Dredge Avis Holland B.V., Great Krypton Prod., Ida Investment, Inmex Ltd., Kandor Prod., Kingfield Management Corp., Narbonne Anstalt, Nestor B.V., Peralta Corp., Platina Group Ltd., Ritom S.A., Superboy Prod. Tarma Trust Management, and Zytrot Commercial S.A. The issues raised in this Petition involve Petitioner's Due Process and Equal Protection rights and do not affect these other parties to the proceedings below.

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ALEXANDER SALKIND,

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

Real Parties-in-Interest Jane Chaplin, Ilya Salkind and Robert Simmonds

Petition For A Writ Of Certiorari To The Supreme Court For The State Of California

PETITION FOR A WRIT OF CERTIORARI

Petitioner Alexander Salkind respectfully petitions this Court to issue a writ of certiorari to review the order of the Supreme Court for the State of California, dated January 19, 1995 in the matter entitled *Alexander Salkind, Petitioner, v. Los Angeles County Superior Court, Respondent, Jane Chaplin, et al., real parties in interest,* Nos. 2/3 B087476 and S043101.

IV. ORDERS BELOW

On January 19, 1995, the California Supreme Court summarily denied (without opinion) Petitioner Alexander Salkind's ("Petitioner") Petition for Review of a Court of

Appeal Order, (App. A1),[2] which in turn had summarily denied (without opinion) Petitioner's Petition for Writ of Mandate and for an Emergency Stay on October 24, 1994. (App. B1.) The Petition for Writ of Mandate in the Court of Appeal sought interlocutory appellate review of the September 21, 1994 Order of the Superior Court for the State of California, County of Los Angeles, which had denied Petitioner's Motion to Quash Service for lack of personal jurisdiction and which concluded that the Superior Court had general personal jurisdiction over Petitioner (a foreign national and non-resident and non-domiciliary of California) in the underlying action which is unrelated to Petitioner's limited contacts with California. (App. C, App. D.)

V. JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.[3] On January 19, 1995, the Supreme Court for the State of California, the highest court of the State, entered its order (App. A) summarily denying the Petition for Review of the October 24, 1994 California Court of Appeals' summary denial of Petitioner's Petition of Writ of Mandate. (App. B.) The trial Court order for which Petitioner had sought appellate review was issued on September 21, 1994. (App. C.) Petitioner did not seek rehearing in the California Supreme Court.

VI. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are set forth in Appendix T attached hereto.

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[2] Pursuant to the Court's rules, copies of the orders below and other materials are included with the Appendix filed herewith and will be referenced to the relevant portion and page of Appendix as for example "App. A1." The Supreme Court for the State of California had granted an extension of time to review the Petitioner's Petition for Review Including Request for Emergency Stay on December 15, 1994. (App. E.)

[3] *Madruga v. Superior Court*, 346 U.S. 556, 557, n. 1, 74 S. Ct. 298, 299 n. 1 (1954); *Hammerstein v. Superior Court*, 341 U.S. 491, 71 S. Ct. 820 (1951); *Michigan Cent. R. Co. v. Mix*, 278 U.S. 492, 494, 49 S. Ct. 207, 208 (1929).

VII. STATEMENT OF THE CASE

A. Statement of Material Facts

Real parties-in-interest commenced an action against Petitioner, and others, seeking damages in excess of $7,000,000 arising from the alleged breach of three separate oral agreements and for allegedly fraudulently inducing real parties-in-interest to enter into those oral agreements. (App. R23, R24.) Petitioner was purportedly served by the mailing of the Summons and Complaint to his attorney in Switzerland. (App. H2, H3). The alleged oral agreement between Petitioner and Chaplin is for a loan allegedly made in Switzerland to Petitioner for use in the financing of the motion picture *Christopher Columbus: The Discovery* (hereinafter "*Christopher Columbus*"). (App. G2, G3.) The alleged oral agreements between Petitioner personally and Ilya and Simmonds were two separate contracts whereby Petitioner allegedly personally agreed to pay certain sums arising from services rendered in connection with the production of *Christopher Columbus*. (App. L12; App. M23, M24.)

These alleged oral agreements were not made in California, but, if made at all, were made in Switzerland and France. (App. G2, G3; App. P5.) None of the oral agreements are alleged to have been breached in California. The laws of Switzerland and France and not California law, govern the causes of action alleged. (App. S18.) Neither Petitioner nor real parties-in-interest have ever resided in California. Petitioner is not a citizen of the United States; he resides outside of the United States; and he has not been in California personally since December 1947. (App. G2, G3.) Petitioner is over 70 years old and is prohibited from traveling by airplane because of his poor health. (App. G4.) None of the real parties-in-interest are American citizens. They reside in Florida and Chaplin is also a domiciliary of Switzerland. (App. G3, G4.) The motion picture *Christopher Columbus* was not produced or filmed in California, was not filmed anywhere in the United States, is owned by a non-United States company, is distributed in the United States by Warner Bros. Inc., an unrelated company, and has a certificate of origination issued

by the British Department of National Heritage certifying the film as a United Kingdom film. (App. P3.)[4] Such other motion pictures as the *Superman* series[5] on which Petitioner served as a "producer" or "presenter" were not distributed in California by Petitioner personally but rather were distributed in California by such independent companies as Warner Bros., Inc. (App. P2, App. Q7.)

Petitioner timely moved for an order dismissing the action as to him for lack of personal jurisdiction pursuant to the procedures set forth in California Code of Civil Procedure § 418.10.[6]

B. The California Procedure Applicable to Challenging Personal Jurisdiction of a California Trial Court and for Subsequent Appellate Review of Orders Granting or Denying Such Motion.

The California procedures that govern review of the exercise of *in personam* jurisdiction by that State's courts: (1) allow a special appearance to challenge, in the first instance, the personal jurisdiction of the state court over a non-resident defendant [C.C.P. § 418.10(1)]; (2) deny an interlocutory appeal as of right from an order asserting *in personam* jurisdiction over a non-resident defendant [C.C.P. § 418.10(c); *McCorkle v. City of Los Angeles*, 70 Cal.2d 252, 257-58, 74 Cal.Rptr. 389, 393 (1969)]; (3) grant an immediate appeal as

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[4] The original complaint filed in the California trial court also alleged cause of action under 18 U.S.C. § 1961, et seq. (the RICO statute). Based upon the existence of federal question jurisdiction, Petitioner removed the action to the United States District Court for the Central District of California on December 22, 1993. Thereafter, real parties-in-interest amended the complaint to delete the RICO claim. Because federal question jurisdiction was thereafter lacking, and because there was not complete diversity (real parties-in-interest and Petitioner are all foreign nationals), the case was thereafter remanded back to the California trial court.

[5] These films are not involved in the action.

[6] The California Code of Civil Procedure shall be referred to herein as C.C.P. § ___."

of right from an order declining to exercise *in personam* jurisdiction over a non-resident defendant [C.C.P. § 904.1(a)(3)]; (4) deem the non-resident defendant who defends the substantive merits of the action, after an adverse decision on personal jurisdiction, to have waived forever any objections to personal jurisdiction of the California trial court (*McCorkle*, *supra*, 70 Cal. 2d at 258, 74 Cal. Rptr. at 393); and (5) grant an appeal as of right as to an order asserting personal jurisdiction over the non-resident defendant if, *and only if*, the defendant abandons his rights of due process to a hearing and trial on the substantive merits of the underlying action. *Id.*

In California, a non-resident defendant may preserve his objection to personal jurisdiction only if he timely serves and files a notice of motion to quash service of summons on the ground of lack of jurisdiction of the court. C.P.P. § 418.10(a). If, as here, the trial court denies the motion to quash, the only possibility of interlocutory appellate review is a petition for a discretionary writ of mandate to the California Court of Appeal. C.C.P. § 410.10(c).[7] Appellate review of an order finding personal jurisdiction by writ of mandate is an extraordinary proceeding, and the grant of a writ is completely within the discretion of the Court of Appeal.[8]

After the summary denial of the petition by the Court of Appeal, a petitioner may seek discretionary review before the California Supreme Court. California Rules of Court, Rule 28. The grant or denial of review by the California Supreme Court also is completely discretionary. When, as in the instant

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[7] Prior to the enactment of the predecessor of C.C.P. § 410.10(c) in 1955 (Former C.C.P. § 416.3) the method for seeking interlocutory review of a finding of personal jurisdiction was a petition for writ of prohibition. *Jardine v. Superior Court*, 213 Cal. 301, 2 P.2d 756 (1931). In California, interlocutory review may generally be sought for any order of a trial court by writ of mandamus or of prohibition. C.C.P. § § 1085, 1102.

[8] California does provide for an interlocutory appeal as of right for numerous circumstances, including orders relating to attachments, injunctions, receivers, and even orders requiring a party or an attorney for a party to pay sanctions in excess of $5,000. C.C.P. § 904.1(a)(5)(6)(7) and (11).

case, the California Court of Appeals or California Supreme Court summarily denies a petition for writ of mandate or a request for review, the denial does not adjudicate the merits. *Kowis v. Howard*, 3 Cal.4th 888, 899, 12 Cal.Rptr.2d 728, 734 (1992).

If, as in the instant case, the California Court of Appeal and the California Supreme Court exercise their discretion to summarily deny the petition for writ of mandate to review a trial court's finding of personal jurisdiction, then there is no appellate review before California's "harsh rule"[9] forces the non-resident defendant to make a Hobson's choice of constitutional dimension. California does not allow the preservation of objections to personal jurisdiction on appeal as of right if the non-resident answers the complaint or otherwise challenges the substantive merits of the underlying case; such action is deemed a general appearance under C.C.P. § 1014 and waives all personal jurisdiction objections. *McCorkle v. City of Los Angeles*, *supra*, 70 Cal.2d 252, 258, 74 Cal.Rptr. 389, 393-94 (1969). Petitioner can only defend the substantive merits of the case if he is prepared to waive his objections under the Due Process Clause to the assertion of personal jurisdiction over him by the California court and, when general jurisdiction is found, possibly suffer the collateral estoppel effect of the trial court's decision in other cases filed in California. Except for a trial court's order imposing personal jurisdiction over a non-resident defendant, every intermediate ruling or order of a California trial court which "substantially affects the rights of a party" is reviewable as of right on appeal and may be raised for review by either the appellant or the appellee. C.C.P. § 906. A decision of the trial court in California finding no personal jurisdiction is immediately appealable as of right. C.C.P. § 904.1(a)(3).

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[9] *See Developments in the Law, State Court Jurisdiction*, 73 *Harv. L. Rev.* 909, 993 at n. 516 (1960).

C. Petitioner's Motion to Quash Service.

Petitioner did not make a general appearance in the trial Court. On May 19, 1994, Petitioner appeared specially in the trial Court and, pursuant to applicable California procedure, C.C.P. § 418.10(a), moved for an order quashing service of the summons and dismissing the action on the grounds that the Court lacked both specific and general personal jurisdiction over Petitioner, that any exercise of personal jurisdiction over Petitioner would violate due process, and that service of process had not been properly completed upon Petitioner.[10] Petitioner argued that Petitioner had insufficient contacts to justify the assertion of either general or specific jurisdiction over him by the State of California. Real parties-in-interest conceded that the California trial court did not have specific personal jurisdiction, but claimed the lower court had general jurisdiction.

D. The Trial Court Ruled it had General Personal Jurisdiction Over Petitioner.

The trial court agreed that specific personal jurisdiction did not exist but concluded that it had general jurisdiction over Petitioner. In reaching its incorrect decision, the trial court misapplied the "continuous and systematic" forum contacts test, wrongfully attributed to Petitioner the California contacts of others, including real parties-in-interest, and identified five contacts with California attributed to Petitioner individually to support its exercise of general jurisdiction: (1) Advertising and distributing nine motion pictures in California; (2) Contact by telephone with an attorney in California; (3) Contact with writers and other entertainment people in California; (4) After the claims asserted in the Complaint

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[10] The evidence before the trial court in support of and in opposition to the Petitioner's Motion to Quash Service for Lack of Personal Jurisdiction and Insufficient Service of Process is summarized in the Appendix submitted herewith at App. F through App. Q.

arose, Petitioner agreed to render personal services as a consultant to Warner Bros.; and (5) Conducting business in California through non-California corporations. None of the claims alleged arose out of any of these contacts. The trial court found that these contacts made Petitioner subject to general jurisdiction in California but did not determine if the exercise of general jurisdiction would offend traditional notions of fair play and substantial justice. The trial court further determined that service had been effected properly upon Petitioner. (App. C and D.)

E. The Court of Appeal's Summary Denial.

On October 14, 1994, Petitioner timely filed a Petition for Writ of Mandate with the California Court of Appeal. (App. P.)

In his Petition for Writ of Mandate, Petitioner argued that the trial court's decision finding general personal jurisdiction over Petitioner violated the Due Process Clause. (App. R25, R27-R32, R41-R64.) On October 25, 1994, the Court of Appeal summarily denied the Petition (App. B).

F. The California Supreme Court's Summary Denial.

On November 4, 1994, Petitioner timely filed a Petition for Review with the Supreme Court for the State of California. (App. S.) Before the California Supreme Court, Petitioner again argued that the trial court's decision violated the Due Process Clause. In addition, Petitioner argued that the denial of the Petition for Writ of Mandate by the California Court of Appeal, by itself, constituted an unconstitutional deprivation of Petitioner's rights because it improperly denied him any appellate review and because it would require him to abandon his due process right to a trial on the merits in order to preserve his objections to the exercise of personal jurisdiction by the trial court on appeal. *See*, *supra* at pp. 2-3. (App. S4-S5; S10-S13.) On January 19, 1995, the California Supreme Court summarily denied the Petition (App. A).

VIII. REASONS FOR GRANTING THE PETITION

A. The California Procedures Arbitrarily Discriminate Against the Right of Non-Resident Defendants to Appellate Review of a Trial Court's Exercise of Personal Jurisdiction and Violate the Due Process and the Equal Protection Clauses of the United States Constitution.

This Petition for Writ of Certiorari is the only way that California's procedural scheme for the determination and review of decisions regarding the exercise of *in personam* jurisdiction of its trial courts can be presented without a litigant having to suffer irreparable harm by waiving either his Due Process rights to a trial on the merits or his Due Process rights to being free from the improper imposition of personal jurisdiction. If this Petition is not granted, the California statutes will continue to coerce litigants to abandon either their substantive defenses or their objections to the extension of personal jurisdiction by the California state courts.

In a similar case, in 1951, this Court originally granted a Writ of Certiorari to review (1) a denial by the California Court of Appeal of a Petition for Writ of Prohibition[11] that had sought review of a trial court's decision exercising personal jurisdiction over a non-resident defendant and (2) a judgment of the Supreme Court of California denying a Petition for a Writ of Certiorari that had sought review of a default judgment that had been thereafter entered by the trial court against that non-resident defendant. *Hammerstein v. Superior Court*, 340 U.S. 622, 71 S. Ct. 521, and 341 U.S. 491, 71 S. Ct. 820 (1951). In *Hammerstein*, this Court exercised its discretion, over a dissent of four Justices, to dismiss the Writ as improvidently granted because the California Supreme Court had declined to review the entry of the default judgment as a result of the failure to appeal directly from the default judgment. 341 U.S. at 492-93, 71 S. Ct. at 821. The

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[11] See n. 3 *supra*.

instant Petition provides this Court with the opportunity to review the California procedures that it initially sought to review in *Hammerstein*.

The California statutory scheme that requires a waiver of substantive rights in order to ensure appeal of personal jurisdiction objections ignores the expanding constitutional limits of *in personam* jurisdiction arising from *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945) and its progeny and violates both the Due Process and Equal Protection Clauses of the United States Constitution.[12]

1. California's "Harsh Rule" That Denies an Appeal of the Exercise of Personal Jurisdiction Unless the Right to Trial on the Substantive Merits is Abandoned is Not the Majority Rule and Does Not Protect the Due Process and Equal Protection Interests of Non-resident Defendants in an Era of Constitutionally Expanded Personal Jurisdiction.

California's coercive scheme for the resolution of challenges to the exercise of *in personam* jurisdiction by its state courts is a "harsh rule" not followed by either the federal courts or most of the states. This Petition presents the Court with the opportunity to determine whether or not California's "harsh rule" is constitutionally permissible.

Unlike in California state courts, in the federal system, a defendant does not waive his objections to the court's exercise of personal jurisdiction merely because his objections are overruled in the first instance or he defends on the merits. F.R.Civ.P. Rule 12(b). *See* generally, *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n. 24 (9th Cir. 1977).[13]

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[12] *Developments in the Law: State Court Jurisdiction*, 73 *Harv. L. Rev.* 909, 994-96 (1960).

[13] Had Petitioner's initial removal of this action to the federal district court for the Central District of California not been thwarted by real parties-in-interest hasty dismissal of their federal RICO claims, Petitioner

Before and since the expansion of due process limitations on the exercise of personal jurisdiction starting with *International Shoe v. State of Washington, supra,* many state courts have adopted procedures and rules substantially similar to the Federal Rules of Civil Procedure that preserve jurisdictional objections for appeal after trial on the merits. *See, e.g., Speyer, et al. v. Continental Sports Cars, Inc.*, 34 Ohio.App.3d 272, 275, 518 N.E.2d 39, 42 (1986) (Texas laws); *Canaday v. Superior Court*, 49 Del. 456, 119 A.2d 347 (1955) (Delaware Civil Rule 12(b)); *Mackey v. Spangler*, 81 Ariz. 113, 117, 301 P.2d 1026, 1029 (1956) (Arizona Rules of Civil Procedure); *Coyne v. Plume, et al.*, 90 Conn. 293, 297, 97 A. 337 (1916) (It would be "unjust to make their [defendants'] right of appeal for want of jurisdiction, conditioned upon their submission to a judgment by default, when they had done all they could to protect their rights"); *Ohio Electric Ry. Co. v. United States Express Co.*, 105 Ohio.St. 331, 345, 137 N.E. 1, 5 (1922) ("[A] defendant having made timely objection to the jurisdiction of the court, upon the overruling of such objection is not bound to rely upon his exception thereto at his peril but may make full defense without waiving such objection"); *South Carolina State Highway Dept. v. Isthmian S.S. Co.*, 210 S.C. 408, 43 S.E.2d 132, 136 (1947) (The revised South Carolina Code); *see Mertens v. McMahon*, 334 Mo. 175, 194, 66 S.W.2d 127, 136 (1933) (A defendant who participates in the trial on the merits after his properly raised objection to personal jurisdiction is ruled against him, does not enter a general appearance such to waive his objection to the court's jurisdiction).[14]

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would not have been subjected to California's "harsh rule." Similarly, in diversity cases in the Ninth Circuit, the district court is to apply the personal jurisdictional law of the state in which it sits, although the procedural rules for determining the questions of personal jurisdiction are governed by the federal rules of civil procedure. *Paccar Intern. v. Commercial Bank of Kuwait, S.A.K.*, 757 F.2d 1058, 1062 (9th Cir. 1985).

[14] On the other hand, it appears that Illinois retains a rule where a defendant, who has challenged the jurisdiction of the state court, may still be found to have waived those objections where, the defendant "couples a

Some states that previously had the "harsh rule" still employed in California, have now abandoned it. For example, in Wisconsin, the "harsh rule" once prevailed (*see, e.g., Corbett v. Physician's Cas. Ass'n. of America*, 135 Wis. 505, 512, 115 N.W. 365, 368 (1908)), but no longer does. *See, e.g.*, W.S.A. § 802.06, modeled after F.R.C.P. Rule 12; and *see Heaton v. Larsen*, 97 Wis.2d 379, 294 N.W.2d 15, 24-25 (1980). Texas, which as recently as 1960 forbade even a special appearance to challenge the personal jurisdiction of the state court and deemed any appearance to be a consent to the jurisdiction of that court, has now abandoned that "harsh rule" and allows preservation of timely made objections to personal jurisdiction on appeal after litigation of the merits. *Canadian Helicopters, Ltd. v. Wittig*, 876 S.W.2d 304, 308 (Tex. 1994).

The Due Process boundaries limiting the jurisdiction of state courts over non-resident defendants have been steadily expanding for at least 50 years. That expansion has led to an increasingly complex and sophisticated factual, legal and constitutional analysis required to determine whether a state court has personal jurisdiction over a non-resident defendant. This analysis is made even more difficult and complex where, as here, the defendant is a non-resident, foreign national and questions not only of "traditional notions of fair play and substantial justice" are involved, but also issues relating to international relations between the United States and other sovereigns. *See, e.g., Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 107 S. Ct. 1026 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559 (1980).

It is timely to determine whether or not in light of all of these constitutional developments, the California "harsh rule" that discriminates against non-resident defendants by denying meaningful appeal rights and requires this class of defendants

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jurisdictional objection with an invitation of the court to exercise its jurisdiction. . . . " *Keats v. Cates*, 100 Ill.App.2d 177, 241 N.E.2d 645 (1968); Illinois Revised Statutes, Chapter 735 5/2-301.

to abandon their substantive defenses in order to preserve their objections to the exercise of personal jurisdiction by the California state courts can pass modern, constitutional scrutiny.

2. Measured Against Either the Equal Protection Clause or the Due Process Clause, California's "Harsh Rule" is Unconstitutional Because it Arbitrarily Discriminates Against the Exercise by Non-Resident Defendants of the Right to Appeal the Exercise of *in Personam* Jurisdiction by a California Court.

In California, the state courts purport to exercise personal jurisdiction over litigants to the farthest extent allowed by the United States Constitution. *C.C.P.* § 410.10. Having extended the judicial power of the California judiciary to the full limits of the Due Process Clause, California has arbitrarily discriminated against those defendants who wish to appeal the exercise of a California court's personal jurisdiction by conditioning the right to appeal upon the waiver of the Due Process right to a trial on the merits of the litigation. Both the Equal Protection Clause and the Due Process Clause forbid California from arbitrarily excluding a class of litigants from exercising the right to appeal granted to all civil litigants in California. *Evitts v. Lucey*, 469 U.S. 387, 405, 105 S. Ct. 830, 840-41 (1985). Once California created a right of appeal from all trial court decisions, it is required to "offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal" and not treat "a class of defendants . . . differently for purposes of offering them a meaningful appeal." *Evitts v. Lucey*, *supra*, 469 U.S. at 405, 105 S. Ct. at 841.[15] *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 & n. 5, 102 S. Ct. 1148, 1154-55 & n. 5 (1982).

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[15] In certain circumstances, including this case, the due process and equal protection principles can converge. The due process inquiry "emphasizes fairness between the State and the individual dealing with the State" and the equal protection analysis "emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600, 609, 94 S. Ct. 2437, 2443

By requiring the abandonment of any defense on the merits of the litigation, the California statutory scheme denies Petitioner, and discriminates against all non-resident defendants challenging the California court's assertion of personal jurisdiction by denying them appellate review of the personal jurisdiction decision.[16]

(1974) quoted with approval in *Evitts v. Lucey*, *supra*, 469 U.S. at 405, 105 S. Ct. at 841.

[16] The unconstitutionality of the California procedure, which discriminates against, and unduly burdens, a non-resident defendant's right to appeal a finding of personal jurisdiction, cannot be saved by reference to this Court's various statements over the years to the effect that a non-resident defendant who wishes to challenge the exercise of personal jurisdiction of a state court "is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding." *Insurance Corp. of Ireland v. Compagnie de Bauxites*, 456 U.S. 694, 706, 102 S. Ct. 2099, 2106 (1982). The rationale for that comment dates back to the *York v. State of Texas*, 137 U.S. 15, 11 S. Ct. 9 (1890), holding that a Texas statute which did not allow a non-resident defendant to enter a "special" appearance to contest the Texas state court's personal jurisdiction did not violate due process. Regardless of the option not to appear specially to challenge personal jurisdiction in the California trial court and to challenge collaterally the California court's jurisdiction to enter a default, and whether or not a state could today constitutionally abolish "special" appearances to challenge the state court's jurisdiction and deem any appearance in court a general appearance that "consents" to the exercise of personal jurisdiction, California's decision to enact a statute authorizing a "special" appearance procedure and granting appellate review as a right of the trial court's decision regarding personal jurisdiction is subject to review under the Due Process Clause. "[T]he right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due process norms." *Evitts v. Lucey*, *supra*, 469 U.S. at 400-401, 105 S. Ct. at 838. In any event, the continued vitality of *York* was brought into question by the subsequent decision in *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 196, 35 S. Ct. 579 (1915), holding that the entry of a judgment against a non-resident corporate defendant who had not generally appeared in an action violated the Due Process Clause regardless of whether the judgment was executed upon because "the very act of fixing by judicial action without a hearing a sum due, even though the method of execution be left open, would be, in

The requirement of the California statutory scheme that Petitioner abandon the right to challenge the substantive merits of the underlying case to perfect a right to appeal the exercise of personal jurisdiction by the trial court also deprives the defendant of procedural due process by depriving him of property interests and the right to be heard in a meaningful manner. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976); *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 646 (1951).

(a) Equal Protection.

Under the Equal Protection analysis, a state statute that makes distinctions between groups presumed similar is "presumed to be valid and will be sustained if the classification . . . is rationally related to a legitimate state interest." *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254 (1985); cited with approval in *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 81, 108 S. Ct. 1645, 1652 (1988). "[A] statute therefore offends the Equal Protection Clause only if the legislative means that [the state] has chosen are not rationally related to these legitimate interests." *Id.* at 82, 108 S. Ct. at 1653.

There is no rational basis for distinguishing non-resident defendants who challenge the personal jurisdiction of the California state court from other litigants with disputes regarding either the substantive merits or other procedural questions arising in litigation before the California state courts. This Court has found far less onerous distinctions regarding the treatment of different appellants to violate constitutional protections provided under the Fourteenth Amendment. For example, in *Lindsey v. Normet*, 405 U.S. 56, 92 S.

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and of itself, a manifestation of power repugnant to the Due Process Clause." The *Riverside* holding contradicts the *York* reasoning that mere entry of a default judgment without an opportunity to be heard did not deprive the defendant of property without due process because such deprivation would only occur when the plaintiff attempted to enforce the default judgment. *York v. State of Texas, supra*, 137 U.S. at 21, 11 S. Ct. at 10.

Ct. 862 (1972), this Court struck down as violative of Equal Protection, an Oregon statute which required, as a condition of perfecting an appeal seeking review of an adverse decision in an eviction action, the posting of an additional appeal bond in twice the amount of the rent expected to accrue pending the appellate decision. The "double bond" requirement imposed requirements on tenants seeking to appeal adverse decisions that bore no reasonable relationship to any valid state objective and arbitrarily discriminated against such tenants. *Id.* 40 at U.S. 78-79, 92 S. Ct. at 877. The impact of the double bond requirement on tenant appellants challenging their evictions was unavoidable because affirmance on appeal would subject those appellants to the loss of their entire double bond and the landlords' recovery on that double bond was not limited to the landlord's actual costs incurred, or rent owed, or damages suffered. No other civil appellants in Oregon were subject to automatic assessment of unproved damages and there was no special purpose of the eviction statute or any special characteristics of the landlord/tenant relationship that would warrant such discrimination.[17]

The California scheme discriminates against a particular class of appellants in an arbitrary and irrational fashion and imposes a burden on the disadvantaged class of non-resident defendants far in excess of that struck down in *Lindsey*. California conditions the non-resident defendants' right to appellate review of a trial court's exercise of personal jurisdiction upon the complete waiver of the right to a trial on the merits. California does not impose such a burden upon any

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[17] *Compare, Bankers Life & Casualty Co. v. Crenshaw, supra*, where a Mississippi statute imposing a 15% penalty on parties who appealed unsuccessfully from money judgment did not violate Equal Protection. The statute applied to both plaintiffs and defendants and to all money judgments, as well as to a long list of judgments whose money value could readily be determined, and there was a rational connection between the statutes' objective to defer frivolous appeals and the imposition of a penalty only on such money judgments. 486 U.S. at 83-85, 108 S. Ct. 1653-54.

other classification of litigant. In the instant case, the complaint seeks recovery of damages in excess of $7,000,000 and the cost to Petitioner to exercise his right of appeal from the trial court's adverse personal jurisdiction decision will be a default judgment in that sum. Even if an appellate court decision overturned the adverse personal jurisdictional decision of the trial court and vacated the default judgment, the mere existence of such a judgment deprives Petitioner of Due Process. *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 35 S. Ct. 579 (1915). Petitioner would also incur substantial expense to procure a supersedeas bond to stay execution on such a default judgment pending appeal.[18] The alternative presented to Petitioner of waiving his jurisdictional objections and proceeding to trial on the merits also imposes an unconstitutional burden upon him. The trial court decided that Petitioner is subject to personal jurisdiction in California on all possible claims by anyone, whether or not related to his minimal contacts with California. Under California law, proceeding on the merits and waiving any personal jurisdiction objections would, most likely give *res judicata* or collateral estoppel effect to the trial court's decision that California courts have general jurisdiction over Petitioner. Going forward on the merits punishes Petitioner by possibly rendering the trial court's "general" jurisdictional decision immune from challenge in any subsequent lawsuits brought against Petitioner in California arising out of any claim or

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[18] If the appellate court were to affirm the default judgment, it could be argued in a subsequent action that the trial court's finding of general jurisdiction would have collateral estoppel effect in other actions against Petitioner. *See, American Sur. Co. v. Baldwin*, 287 U.S. 156, 166-167, 53 S. Ct. 98, 101-102 (1932); *Baldwin v. Iowa State Traveling Men's Assoc.*, 283 U.S. 522, 525, 51 S. Ct. 517, 518 (1931); Cf. *Chicot & County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 377-78, 60 S. Ct. 317, 320 (1940) (subject matter jurisdiction); *Stoll v. Gottlieb*, 305 U.S. 165, 170, 176-77, 59 S. Ct. 134, 138-139 (1938) (subject matter jurisdiction).

cause of action, whether or not related in any way to California and whether or not brought by a resident or domiciliary of California.[19]

(b) Due Process.

In *Mathews v. Eldridge*, this Court delineated three distinct factors to be considered in determining whether or not procedural Due Process has been denied by a specific statutory scheme: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and, (3) "the government's interest, including the function involved and the fiscal administrative burdens that the additional or substitute procedural requirements would entail." *Mathews v. Eldridge*, *supra* at 335, 96 S. Ct. at 903.

A review of these three factors demonstrates that the California statutory scheme is an unconstitutional deprivation of procedural Due Process.

First, the private interests affected by this California legislative scheme are the Due Process guarantees of a hearing on the merits of the underlying action or, in the alternative, the right to meaningful appellate review of the trial court's personal jurisdiction decision. The private interests affected by the California statutory scheme are Constitutionally-protected interests.

Second, the risk of erroneous deprivation of such important interests through the California procedures are clear. Petitioner must either waive his right to a trial on the merits, or waive his right to an appeal.

The values of substitute procedural safeguards in these circumstances are clear. California could provide that litigation of the merits does not waive the personal jurisdictional objections and that those objections are preserved for appeal

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[19] *See*, n. 18, *supra*.

from a final judgment along with any objections to the outcome on the merits. California would also continue its procedures allowing for a discretionary interlocutory appeal by petition for writ of mandamus. C.C.P. § 418.10(c); *compare*, F.R.Civ.P. Rule 12(b) and 28 U.S.C. § 1292. Alternatively, the California legislature could grant an absolute right of interlocutory appeal from an adverse decision regarding the personal jurisdiction of the trial court. California already provides such mandatory interlocutory appeals for various types of non-final orders and rulings. C.C.P. § 904.1(a); *see* n. 8, *supra*.

Either of these two alternatives would serve the legitimate interests of the litigants of ultimately having a trial on the merits as well as a meaningful appeal of whether the imposition of personal jurisdiction is within Due Process limits. The State of California can have no justifiable governmental interest in either coercing defendants to litigate the merits of an action where the California state courts do not have personal jurisdiction.[20] Nor does California have any justifiable interest in compelling litigants to waive their Due Process rights to trial on the merits in order to obtain appellate review of whether the California state courts are acting within the parameters set by the Due Process Clause in the exercise of personal jurisdiction over defendant.[21]

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[20] No governmental nor fiscal nor administrative burdens would be caused by adoption of these substitute procedures. The California legislature has already accepted the possibility of the additional costs and delay of ultimate resolution of the merits by adopting the procedure of a discretionary appellate review through the ever present possibility of a petition for writ of mandamus.

[21] In the instant case, it is difficult to discern any justifiable interest that California might have to provide a forum for the underlying dispute. All of the parties are non-California residents or non-California domiciliaries. None of them are even United States citizens. The causes of action do not arise in California, nor are any damages suffered in California. In these circumstances, the proper governmental interest of the State of California would be to insure that judicial resources were not wasted either on a trial, nor on enforcement proceedings of a default judgment without complete

B. Granting the Petition Will Allow This Court to Decide Whether the Rule of "Continuous and Systematic" Forum Contacts Used to Support General Jurisdiction Over Non-Resident Corporations may Also be Applied to an Individual as the Basis for General Jurisdiction Without Violating Due Process and to Clarify Further the Constitutionally Permissible Bases for the Assertion of General Personal Jurisdiction Over Individuals.

The trial court based its exercise of general jurisdiction[22] upon the conclusion that Petitioner was individually "doing business" in the forum even though he lives in Europe and has not been in California since 1947. As a result of aggregating certain contacts with California done over a 20 year period (App. L2-L3) either telephonically or by mail by Petitioner individually from Europe or by others in California, including real parties in interest Ilya and Simmonds, the trial court

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appellate review on the merits of whether the exercise of personal jurisdiction over Petitioner comports with the requirements of due process.

[22] "General jurisdiction" is the term used to refer to the circumstances when the state exercises personal jurisdiction over a non-resident defendant in a suit not arising out of or related to the non-resident defendant's contact with the forum and "specific" jurisdiction refers to circumstances when a state exercises personal jurisdiction over a non-resident defendant in a suit that does arise out of, or is related to the defendant's contacts with the forum. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414, nn. 8 & 9, 104 S. Ct. 1868, 1872, nn. 8 & 9 (1984). The exercise of general jurisdiction is also a conclusion that the nonresident defendant is sufficiently "present" in the forum to be subjected to personal jurisdiction not only in the case in which such conclusion is reached, but also with respect to any other litigation brought by any other plaintiffs raising any other claims. To state this in terms of the instant case, the trial court actually concluded that Petitioner, a European resident, is subject to suit in California for example, by a Parisian hotel seeking to recover unpaid hotel charges incurred by Petitioner. This example is not really any more far fetched than the trial court's conclusion that Petitioner is subject to suit in California state courts brought by a Swiss domiciliary, Chaplin, to recover a loan allegedly made by Chaplin to Petitioner in Switzerland.

concluded that the California courts had as much personal jurisdiction over Petitioner as if he were a resident or domiciliary of California. The trial court thus applied the "continuous and systematic" forum contact rule recognized as applicable to corporations in *International Shoe Co. v. State of Washington*, 326 U.S. 310, 317-18, 66 S. Ct. 164, 159 (1945) ("*International Shoe*"), and approved *in dicta* as applicable to individuals by the California Supreme Court. *Cornelison v. Chaney*, 16 Cal.3d 143, 147, 127 Cal.Rptr. 352, 354 (1976). This Petition presents the question whether due process allows the application to an individual, non-resident defendant of that rule which was originally developed to measure the "presence" of a corporation, a fictitious person, in a forum. This exact question was noted, but not decided, in *Burnham v. Superior Court of California*, 495 U.S. 604, 610 n. 1, 110 S. Ct. 2105, 2110 and n. 1 (1990) ("*Burnham*"). This issue is ripe for review now in this case.

Since *International Shoe*, this Court has three times considered when general jurisdiction could be found over a non-resident defendant. Two cases involved corporations *Perkins v. Benquet Consolidated Mining Co.*, 343 U.S. 917, 72 S. Ct. 644 (1952) ("*Perkins*") and *Helicopteros Nacionales de Columbia S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868 (1984) ("*Helicopteros*"), and one involved an individual, *Burnham v. Superior Court of California, supra.*

In *Perkins*, and *Helicopteros*, this Court applied the "continuous and systematic" forum contacts test to determine whether non-resident corporations were amenable to general jurisdiction such that the state court had jurisdiction over such non-resident defendant with respect to matters unrelated to activity in the forum. The "continuous and systematic" rule's application to corporations was recognized in *International Shoe, supra*, 326 U.S. at 317-318, 66 S. Ct. at 159, where it was observed that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." In *Perkins*, the "continuous and systematic" forum contact rule allowed the assertion of

general jurisdiction under the Due Process Clause. *Perkins*, *supra*, 342 U.S. at 445-46, 72 S. Ct. at 418. In *Helicopteros*, the rule prohibited the exercise of general jurisdiction. *Helicopteros*, *supra*, 466 U.S. at 418, 104 S. Ct. at 1874. *Burnham* concluded that service of process on an individual, nonresident defendant while he was physically present (albeit briefly) in California was sufficient under due process to confer general jurisdiction in the California state courts. *Burnham*, *supra*. Justice Scalia declined to discuss whether general jurisdiction could be asserted over the individual nonresident defendant as a result of the application of the continuous and systematic" forum contacts rule and observed that "it may be that whatever special rule exists permitting 'continuous and systematic' contacts [citing *Perkins*] to support jurisdiction with respect to matters unrelated to activity in the forum applies *only* to corporations, which have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person' " (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)) and expressed "no views on these matters." *Burnham*, *supra*, 495 U.S. at 610, n. 1, 110 S. Ct. at 2110, n. 1, (emphasis in the original).

The issue reserved in *Burnham* is expressly presented by the instant petition. The California trial court based its conclusion of general jurisdiction over petitioner, an individual, solely upon its conclusion that Petitioner had such continuous and systematic contacts with California as to be "doing business" in the forum so as to support jurisdiction with respect to matters totally unrelated to his activity in, or connected with, California. No other basis for general jurisdiction exists: Petitioner is not a resident, domiciliary, or citizen of California; he was not served while in California; and he has not consented to jurisdiction in California.

The "continuous and systematic" forum contacts test was created specifically for corporations. To apply it to an individual raises substantial due process issues and ignores the reasons for the rule's creation. Historically courts based the power to exercise what is now called general jurisdiction "on

their de facto power over the defendant's person" and therefore the defendant's "presence" within the territorial jurisdiction of the court was a prerequisite of its rendition of a personally binding judgment. *International Shoe*, *supra*, 326 U.S. at 316, 66 S. Ct. at 158 [citing *Pennoyer v. Neff*, 95 U.S. 714, 733, 24 L.Ed. 565 (1878)]. Because the corporate personality is a fiction and "that unlike an individual its 'presence' without as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it," the rule developed that "continuous and systematic" activity on behalf of the corporation could make it susceptible to general personal jurisdiction "away from its 'home' or principal place of business" if the "quality and nature" of such activities on behalf of the corporation and the inconveniences to be suffered by the corporation from being brought to trial away from its "home" or principal place of business, were such "to make it reasonable and just according to our traditional conception of fair play and substantial justice" to exercise general jurisdiction over the non-resident corporation. *Id.*, 326 U.S. at 316-320, 66 S. Ct. at 158-160. The "continuous and systematic" forum contacts test should not under due process standards, be used as a basis for assertion of general jurisdiction over a real individual whose personality and physical presence is not a fiction and is readily ascertained.

The due process restrictions upon the exercise of general jurisdiction have not received the same amount of judicial analysis by this Court, or the lower courts, as have the limitations upon the exercise of specific jurisdiction. *Perkins* and *Helicopteros* both examined the application of the "continuous and systematic" forum contacts rule to non-resident corporations and *Burnham* analyzed the question of transient, physical presence of a nonresident defendant within the forum when he was served. In the specific jurisdiction field, numerous other issues have been discussed and developed in

addition to *International Shoe's* "minimum contacts" concept.[23]

Helicopteros affirmed the vitality of the general jurisdiction doctrine and the application of due process to it and has been the subject of substantial commentary, which, while applauding *Helicopteros* as a "first step" towards resolving inconsistent applications of general and specific jurisdiction, observe that the decision did not provide sufficient guidance to the lower courts regarding that application of the due process limitations of general jurisdiction.[24]

Clarification of the applicability of the "continuous and substantial" forum contacts test to an individual, as opposed to a corporation, will be a large step towards clarifying the due process limits on general jurisdiction over an individual. Commentators have observed that the application of the general jurisdiction test should result in a finding of general jurisdiction in a forum that functions, in essence, as the defendant's "home base." *E.g.*, *Albright*, *supra*, 71 *Tex. L. Rev.* at 374-75; *Brilmayer*, *supra*, 66 *Tex. L. Rev.* at 728-35 (describing domicile, place of incorporation, and principal

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[23] *E.g. Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958) (purposeful availment); *WorldWide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980) (foreseeability); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985) (voluntariness and the observation that jurisdiction may not rest on the "unilateral activity of another party or a third person"); *Asahi Metal Industries Co. v. Superior Court*, 480 U.S. 102, 107 S. Ct. 1026 (1987) (even in the presence of sufficient minimum contacts with the forum, exercise of personal jurisdiction may be prohibited by the concepts of fair play and substantial justice).

[24] *E.g.*, Howard Stravitz, *Sayonara to Minimum Contacts: Asahi Metal Industry Co. v. Superior Court*, 39 *So. Caro. L. Rev.* 729, 773, n. 213 (1988); Mary Twitchell, *The Myth of General Jurisdiction*, 101 *Harv. L. Rev.* 610, 612 (1988) ("Twitchell"); Alex Albright, *In Personam Jurisdiction: A Confused and Inappropriate Substitute for Forum Non-Conveniens*, 71 *Tex. L. Rev.* 351, 375 (1992) ("Albright"); Lea Brilmayer, et al., *A General Look At General Jurisdictions*, 66 *Tex. L. Rev.* 721, 724 (1988) ("Brilmayer").

place of business as the three paradigms of general jurisdiction); *Twitchell, supra*, 101 *Harv. L. Rev.* at 667-70. Traditionally, an individual's "home base" for purposes of general jurisdiction has consisted of domicile, residency and citizenship. *Id.*[25]

Confusion arising from the application of the "continuous and systematic" forum contacts test to an individual, has also led lower courts to confused and questionable rulings.[26] In *Cornelison v. Chaney*, 16 Cal.3d 143, 146-49, 127 Cal.Rptr. 352, 354-56 (1976), Four Justices of the California Supreme Court first applied the "continuous and substantial" contacts test and determined there was not general jurisdiction over a non-resident, individual defendant who had been involved in an automobile accident in Nevada with a California resident but that the defendant's contacts were sufficient to support the exercise of specific jurisdiction. Three Justices of the California Supreme Court pointed out in dissent that "defendant's continuous activity within California is relevant only to determining whether he is sufficiently 'present' within

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[25] Of course service within the forum and consent have also formed a basis for general personal jurisdiction. *Burnham, supra*; *Insurance Company of Ireland v. Compagnie des Bauxites, supra*, 456 U.S. at 703, 102 S. Ct. at 2105. Neither consent nor service within California form the basis for the assertion of general jurisdiction in this case.

[26] Part of the confusion regarding the applicability of the "continuous and substantial" forum contacts test to individuals, also arises from this Court's statements in *Calder v. Jones*, 465 U.S. 783, 786-87, 104 S. Ct. 1482, 1485 (1984), where it was noted that the California Court of Appeal had agreed that petitioner's contacts with California would not be "sufficient for an assertion of jurisdiction on a cause of action unrelated to those contacts," followed by a citation to *Perkins, supra*, as "permitting general jurisdiction where defendant's contacts with the forum were 'continuous and systematic.' " While clearly *dicta*, and clearly a correct statement of what the California Court of Appeal had said, *Jones v. Calder*, 138 Cal.App.3d 134, 133, 187 Cal.Rptr. 825, 828-29 (1982), this comment can be misinterpreted because in *Calder v. Jones*, the objection to personal jurisdiction was brought by individual defendants and not by the corporate defendant.

the state to support an assertion of general jurisdiction" and that those contacts, because there is no real connection between them and the allegedly negligent accident occurring in Nevada, could not be considered in analyzing whether specific jurisdiction existed under the due process clause. *Id.* 16 Cal.3d. at 152, 153-54, 127 Cal.Rptr. at 357, 358 (Dissent, Clark J.).[27]

If some type of "continuous and systematic" forum contacts test can survive due process scrutiny as applied to an individual, then what guidelines govern application of such a rule?

In *Perkins*, the corporate defendant's forum-related activity clearly rose to the level of the actual administrative management of the corporation. *Perkins*, *supra*, 342 U.S. at 447-48, 72 S. Ct. at 419. In *Helicopteros*, the contacts with the forum did not rise to the level of any significant management function over the non-resident defendant and were limited to the negotiation of contracts and acquisition of helicopters for use in the defendant's business. *Helicopteros*, *supra*, 466 U.S. at 411, 104 S. Ct. at 1870-71. Where an individual is the non-resident defendant, what analogous activity to the *Perkins* substantial corporate management activity engaged can be found?

Within the constraints of due process protection of individual liberty, can there be a forum other than an individual's domicile or residence where that individual could be subject

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[27] *See, also Schlobohm v. Shapiro*, 784 S.W. 2d 355 (Tex. 1990) (finding general jurisdiction in Texas over a Pennsylvania doctor because it concluded that his contacts in Texas were "continuous and systematic" in an action brought by creditors of a Texas corporation [a laundry] owned by the non-resident defendant and operated by his son). This case is criticized in Albright, *supra*, 71 *Tex. L. Rev.* at 372-74, 377-79. ("Neither the Court of Appeals, the Supreme Court, nor plaintiff would claim that it would be fair to bring any suit against Dr. Shapiro in Texas because of his relationship to [the laundry]. Does due process envision that one of Shaprio's Pennsylvania radiology patients could sue him for malpractice in Texas? Would due process allow a stockbrokerage firm to sue Shaprio in Texas over an investment made in New York? Surely not.")

to general personal jurisdiction except by consent or actual service within the forum? If so, does the application of the "continuous and substantial" forum contacts test identify that forum in any meaningful or predictable way?

If a "continuous and systematic" forum contacts test can be applied to an individual, are all contacts with the forum to be treated equally, or are some contacts more important than others? For an individual, would forum contacts only count if they were actually engaged in by that individual personally, as opposed to being done by individuals or companies either acting with, or on behalf of, or as alter egos with the non-resident individual defendant? In the instant case, the trial court attributed to Petitioner contacts not only engaged by him personally (e.g. telephone calls between Europe and California) but also contacts engaged in by others, including real parties-in-interest Ilya and Simmonds. (App. D; App. L8-L10; App. M13-M15.) Does it matter whether those contacts result from engaging in interstate or intrastate activities? *See Brilmayer, supra*, 66 *Tex. L. Rev.* 739-40, 744. In the instant case, Petitioner's contacts with California all arose with respect to the transaction of intrastate, and, indeed, international activities.

If a "continuous and systematic" forum contacts rule is applicable to individuals as a basis for general jurisdiction, does due process forbid the exercise of jurisdiction if it would offend "traditional notions of fair play and substantial justice?" The Circuits are split on this issue. *Compare, e.g., Behagen v. Amateur Basketball Assoc.*, 744 F.2d 731, 734 n. 2 (10th Cir. 1984), *with Dalton v. R & W Marine Inc.*, 897 F.2d 1359, 1363 (5th Cir. 1990). The California trial court failed to make any such evaluation. Can the "continuous and systematic" rule be used as a basis for personal jurisdiction over an individual where, as here, it would be unconstitutional for the trial court to apply forum substantive law to the merits of the action? *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22, 105 S. Ct. 2965, 2979 (1985) (forum constitutionally prohibited from applying its own laws to claims with which the forum has no significant contacts on aggregation of contacts.)

The decision of the trial court below applying the "continuous and systematic" forum contacts test to Petitioner resulted in an unconstitutional imposition of general jurisdiction. Because the use of that test was the only basis for the assertion of jurisdiction over Petitioner, and because there is concededly no specific jurisdiction over Petitioner, this case presents a unique opportunity to examine the question reserved in *Burnham* and for the Court to explain whether the "continuous and systematic" forum contacts test can be applied to an individual and, if so, in what manner and to what degree. Such a decision would help clarify an intricate and important area of the law, guide the lower courts, and allow individuals to more accurately predict where they might be subject to general jurisdiction.

IX. CONCLUSION

This Petition presents two important constitutional issues that are ripe for resolution at this time. Whether the California procedure that deprives non-resident defendants of the right to appeal personal jurisdiction decision without abandoning trial on the merits, is an issue that this Court had an opportunity to review 45 years ago, but did not because of the procedural posture of the case than before it. The instant Petition suffers from no such procedural problem and presents the issue clearly at this time. The California judicial system affects many individuals who are citizens of other states and of foreign nations. Whether due process can allow California to continue to discriminate against non-resident defendants is an important question that needs to be answered.

Five years ago, it was recognized in the *Burnham* decision that whether the "continuous and substantial" forum contacts rule can constitutionally be applied to an individual, as opposed to a corporation, was unresolved by this Court.

This important issue is presented by this Petition and it would be timely and instructive for this Court to resolve this issue.

Respectfully submitted,

Counsel of Record for Petitioner
VINCENT H. CHIEFFO

Other Counsel:
KENNETH I. SIDLE
CHRISTINE C. GOODMAN
GIPSON HOFFMAN & PANCIONE

1901 Avenue of the Stars
Suite 1100
Los Angeles, CA 90067
(310) 556-4660

Attorneys for Petitioner

APPENDIX A

No. 2/3 B087476 – S043101

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

ALEXANDER SALKIND, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT,
Respondent JANE CHAPLIN et al.,
Real Parties in Interest

(Filed Jan. 19, 1995)

Application for stay and petition for review DENIED

LUCAS
Chief Justice

APPENDIX B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 10/25/94

Gipson Hoffman & Pancione
Vincent H. Chieffo
1901 Avenue of the Stars
Suite 1100
Los Angeles, CA. 90067 6002

RE: Salkind, Alexander
VS.
S. C. L. A.
Chaplin, Jane
2 Civil B087476
Los Angeles No. BC093733

THE COURT:

The petition for writ of Mandate-Stay is denied.

APPENDIX C

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 09/21/94			DEPT. 64
HONORABLE RICARDO TORRES	JUDGE	S. HERDA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM	ELECTRONIC RECORDING MONITOR	
M. MORENO, C.S.L.	Deputy Sheriff	M. TORRES ERM	Reporter

8:30 am

BC093733
JANE CHAPLIN ET AL
VS
ALEXANDER SALKIND ET AL

REMANDED TO FEDERAL COURT - 1/6

Plaintiff Counsel	CHRYSTIE & BERLE By: David Boyle (X) By: Elihu Berle (X)
Defendant Counsel	GIPSON, HOFFMAN & PANCION By: Christine Chambers (X) By: Vincent Chieffo (X)

C2

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANTS, JAMES LANYON AND PEEL ENTERPRISES, LTD., TO QUASH SERVICE OF SUMMONS (CF 7/20/94)

MOTION OF PLAINTIFFS JANE CHAPLIN, ILYA SALKIND AND ROBERT SIMMONDS, FOR SANCTIONS AGAINST ALEXANDER SALKIND AND HIS ATTORNEYS OF RECORD, GIPSON HOFFMAN & PANCIONE, FOR DELIBERATE DISOBEDIENCE OF COURT ORDERS COMPELLING DISCOVERY

Motion of defendants Lanyon and Peel comes on for hearing and is granted.

Motion of Plaintiffs comes on for hearing and is denied as to the issue of quashing service. Request for monetary sanctions is denied.

Notice is waived.

MINUTES ENTERED
09/21/94
COUNTY CLERK

APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 64 — HON. RICARDO TORRES, JUDGE

JANE CHAPLIN, et al., Plaintiffs,	)	
vs.	)	NO. BC 093 733
ALEXANDER SALKIND, et al., Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

September 21, 1994

APPEARANCES:

For Plaintiffs:

CHRYSTIE & BERLE
BY: ELIHU M. BERLE
DAVID E. BOYLE
Suite 2200
1925 Century Park East
Los Angeles, CA 90067
(310) 788-7700

For Defendants: GIPSON, HOFFMAN & PANCIONE
BY: VINCENT H. CHIEFFO
CHRISTINE M. CHAMBERS
Suite 1100
1901 Avenue of the Stars
Los Angeles, CA 90067-6002
(310) 556-4660

REPORTED BY: MICHELE TORRES
TRANSCRIPTIONS BY: FOX TRANSCRIPTION

* * *

[p. 14] it. It's legal. You can do it.

MR. CHIEFFO: And Buckeye which, again, counsel refers to is a specific jurisdiction case where the – where the cause of action arose out of the sending in of a boiler into California.

We don't have a cause of action about any settlement agreements that might have been made or any licenses agreements that might have been made even had they been made by Alexander Salkind.

Thank you, Your Honor.

THE COURT: All right.

Thank you.

This – this ruling's only as to defendant Salkind. The motion to quash service of summons is denied. I don't find any problem with the summons and the complaint were properly served on the – on the defendant.

This court – the court finds that this court has general jurisdiction over the defendant. To establish general jurisdiction, the plaintiff must show that defendant Salkind had continuous and systematic contacts with California.

The plaintiff has provided facts showing that, one, defend- – defendant has advertised, distributed and exhibited at least nine films in California; two, the defendant maintains contacts with an entertainment transaction attorney in California; three, the defendant often contacts people in California – California residents in regards to – for writers, directors, merchandising [p. 15] rights, et cetera.

The – four, defendant contract in California to be a consultant for Warner Brothers; five, the defendant conducted his production business through many corporations in California. And that while it's true that the defendant does not reside in California and may only rarely come physically to California, he does significant – significant and continuous business as a motion picture producer within California to telephone facts, et cetera.

California law provides that due process does not require the defendant be physically present in California, and he is subject to general jurisdiction in this state.

That's my ruling.

Regards to the motion for sanctions, that's off calendar, that's moot.

Anything further, gentlemen? And ladies?

MR. BERLE: Nothing.

MR. CHIEFFO: You just eliminated Ms. Goodman's opportunity to argue, Your Honor.

I think Your Honor –

THE COURT: What's our – what's our next step now in this case?

MR. CHIEFFO: I think Your Honor is correct –

THE COURT: I'm going to need a truck to haul this thing around.

MR. CHIEFFO: I think Your Honor is correct there will be appeals, I mean, certainly that's our intention. I'm assuming counsel's intentions.

* * *

APPENDIX E

Second Appellate District, Division Three,
No. B087476
S043101

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

ALEXANDER SALKIND, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT,
Respondent
JANE CHAPLIN, Real Party In Interest

(Filed Dec. 15, 1994)

The time for granting or denying review in the above cause is hereby extended to and including February 2, 1995, or the date upon which review is either granted or denied.

/s/ Kennard
Acting Chief Justice

APPENDIX F

GIPSON HOFFMAN & PANCIONE
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Attorneys for Defendants
Alexander Salkind,
Great Krypton Productions, Inc.,
Kandor Productions, Inc., and
Superboy Productions, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JANE CHAPLIN, etc., et al. Plaintiff, vs. ALEXANDER SALKIND, etc., et al. Defendants.	Case No. BC 093733 (Filed May 19, 1994) (Assigned to Honorable Ricardo A. Torres) DECLARATION OF BRUNO HOEFLER IN SUPPORT OF MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION DATE: June 7, 1994 TIME: 8:30 a.m. DEPT: 64

I, Bruno Hoefler, do hereby declare:

1. I am knowledgeable of the affairs of defendant Great Krypton Productions, Inc., Superboy Productions, Inc., and Kandor Productions, Inc. in my capacity as an officer of Pueblo Film Consultancy AG, which rendered administrative services to those companies. I have personal knowledge of all matters stated herein. If called upon to testify in this matter, I could and would testify competently testify thereto under oath.

2. Defendant Great Krypton Production, Inc. ("Great Krypton") is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Delaware and is now inactive but was engaged in the business of film and television productions.

3. Great Krypton is not incorporated in California; nor is it qualified to do business in California. Great Krypton has no subsidiaries incorporated or qualified to do business in California.

4. None of Great Krypton's officers, directors or principles reside in or are domiciled in California.

5. Great Krypton has no employees or agents residing or domiciled in California, nor has it contracted with persons residing in California to act on its behalf with respect to marketing, distributing, or servicing any of Great Krypton's goods, services or products.

6. Great Krypton has no branch office or comparable facilities in California, and has no telephone listing or mailing addresses in California.

7. Great Krypton has no bank accounts or other tangible personal or real property in California.

8. Great Krypton does not sell or lease any property outside the State of California for use within California.

9. Great Krypton does not direct any of its advertising specifically towards California residents, nor does it advertise in any publications that are directed primarily toward California residents.

10. No meetings of Great Krypton's Board of Directors or shareholders have been held in California; and none of its officers or directors have attended business conferences or similar functions within the State.

11. Great Krypton has no subsidiary or other controlled entity with any of the contacts enumerated above.

12. The acts or omissions for which Great Krypton is sought to be held liable in this action, as described in the Complaint, all occurred outside of California.

13. Besides this lawsuit, Great Krypton is aware of no litigation by or against it in California.

14. It would be unreasonable to require Great Krypton to defend this action in courts within California for the following reasons: Great Krypton has no substantial connection with the State of California; Great Krypton has no substantial contact with the State of California; an alternative forum exists; and the burden on Great Krypton to appear locally would be significant.

15. Defendant Superboy Productions, Inc. ("Superboy") is a corporation incorporated under the laws of the State of Delaware, with its principal place of

business in Delaware and is inactive now but was engaged in the business of television production.

16. Superboy is not incorporated in California; nor is it qualified to do business in California. Superboy has no subsidiaries incorporated or qualified to do business in California.

17. None of Superboy's officers, directors or principles reside in or are domiciled in California.

18. Superboy has no employees or agents residing or domiciled in California, nor has it contracted with persons residing in California to act on its behalf with respect to marketing, distributing, or servicing any of Superboy's goods, services or products.

19. Superboy has no branch office or comparable facilities in California, and has no telephone listing or mailing addresses in California.

20. Superboy has no bank accounts or other tangible personal or real property in California.

21. Superboy does not sell or lease any property outside the State of California for use within California.

22. Superboy does not direct any of its advertising specifically towards California residents, nor does it advertise in any publications that are directed primarily toward California residents.

23. No meetings of Superboy's Board of Directors or shareholders have been held in California; and none of its officers or directors have attended business conferences or similar functions within the State.

24. Superboy has no subsidiary or other controlled entity with any of the contacts enumerated above.

25. The acts or omissions for which Superboy is sought to be held liable in this action, as described in the Complaint, all occurred outside of California.

26. Besides this lawsuit, Superboy is aware of no litigation by or against it in California.

27. It would be unreasonable to require Superboy to defend this action in courts within California for the following reasons: Superboy has no substantial connection with the State of California; Superboy has no substantial contact with the State of California; an alternative forum exists; and the burden on Superboy to appear locally would be significant.

28. Defendant Kandor Production, Inc. ("Kandor") is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Delaware and is inactive but was engaged in the business of film production.

29. Kandor is not incorporated in California; nor is it qualified to do business in California. Kandor has no subsidiaries incorporated or qualified to do business in California.

30. None of Kandor's officers, directors or principles reside in or are domiciled in California.

31. Kandor has no employees or agents residing or domiciled in California, nor has it contracted with persons residing in California to act on its behalf with respect to marketing, distributing, or servicing any of Kandor's goods, services or products.

32. Kandor has no branch office or comparable facilities in California, and has no telephone listing or mailing addresses in California.

33. Kandor has no bank accounts or other tangible personal or real property in California.

34. Kandor does not sell or lease any property outside the State of California for use within California.

35. Kandor does not direct any of its advertising specifically towards California residents, nor does it advertise in any publications that are directed primarily toward California residents.

36. No meetings of Kandor's Board of Directors or shareholders have been held in California; and none of its officers or directors have attended business conferences or similar functions within the State.

37. Kandor has no subsidiary or other controlled entity with any of the contacts enumerated above.

38. The acts or omissions for which Kandor is sought to be held liable in this action, as described in the Complaint, all occurred outside of California.

39. Besides this lawsuit, Kandor is aware of no litigation by or against it in California.

40. It would be unreasonable to require Kandor to defend this action in courts within California for the following reasons: Kandor has no substantial connection with the State of California; Kandor has no substantial contact with the State of California; an alternative forum exists; and the burden on Kandor to appear locally would be significant.

41. I have read and understand the First Amended Complaint filed against Great Krypton, Superboy and Kandor, among others, in this action. I did not personally participate in or direct any of the acts alleged in the First Amended Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 18th day of May, 1994 at CANNES/FRANCE.

/s/ B. Hoefler
Bruno Hoefler

APPENDIX G

GIPSON HOFFMAN & PANCIONE
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Attorneys for Defendants
Alexander Salkind, Great Krypton Productions, Inc., Kandor Productions, Inc., and Superboy Productions, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JANE CHAPLIN, etc., et al. Plaintiff, vs. ALEXANDER SALKIND, etc., et al. Defendants.	Case No. BC 093733 (Filed May 19, 1994) (Assigned to Honorable Ricardo A. Torres) DECLARATION OF ALEXANDER SALKIND IN SUPPORT OF SALKIND'S MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION DATE: June 7, 1994 TIME: 8:30 a.m. DEPT: 64

I, Alexander Salkind, do hereby declare:

1. I am named as a defendant in the above-referenced action. The following facts are personally known to me to be true, except for these stated on information and belief, and as to those I believe them to be true. If called upon to testify in this matter, I could and would testify competently thereto under oath.

2. I reside and am domiciled outside of the United States. I am not, and never have been, an American citizen. I do not reside, and never have resided in the State of California or in any other state, territory or possession of the United States. I am not, nor have I ever been, domiciled in the State of California or in any other state, territory or possession of the United States.

3. I have no employees or agents residing or domiciled in California, or in the United States.

4. I have no bank accounts or other tangible personal or real property in California or in the United States.

5. I do not transact business in California.

6. I do not sell or lease any property out of the State of California or in the United States for use within the State of California or in the United States.

7. The acts or omissions for which I am sought to be held liable in this action, as described in the complaint, all occurred outside of California. Plaintiff Jane Chaplin did invest money in the production of the motion picture *"Christopher Columbus: The Discovery"* (hereinafter referred to as *"Christopher Columbus"*). All discussions in this regard between myself and Ms. Chaplin occurred in

Switzerland and all funds invested by Ms. Chaplin were transferred from Swiss financial institutions to other Swiss financial institutions for the benefit of the production of *Christopher Columbus*.

8. I am informed and believe that the public record of Corsier-sur-Vevey, Switzerland reflects that Ms. Chaplin is a registered domiciliary of Corsier-sur-Vevey and remains so to this very day. A copy of an excerpt of the public inhabitants registration record of the Administration of Corsier-sur-Vevey is attached hereto as Exhibit "A." I had no negotiations with plaintiff Ilya Salkind, my son, while he was in California, or in the United States, regarding the alleged contract he claims he and I entered into as set forth in the First Amended Complaint on file herein. I had no negotiations with plaintiff Simmonds in either California or anywhere else in the United States regarding the alleged contract he claims I entered into with him as alleged in the First Amended Complaint. Indeed, I have only been physically in the United States on approximately seven (7) occasions. The last time I was in California was in December, 1946; the last time I was in the United States was during the year 1983.

9. Ilya Salkind is a citizen of Mexico, and I am informed and believe, holds resident alien status in the United States and resides in and owns a home in, Orlando, Florida. Robert Simmonds is, I am informed and believe, a citizen of the United Kingdom. I am not aware of his immigration status, but I am informed and believe that he resides in a private residence, which he recently bought, in Orlando, Florida. Ms. Jane Chaplin is registered as a domicile of Corsier-sur-Vevey, Switzerland, according to the local registration in the local administration office. Ms. Chaplin and my son Ilya have lived

together for over eight years, although, to the best of my knowledge, they are not married. They have a son, approximately eight years old, and a newborn infant. I understand that Ms. Chaplin and my son Ilya have been living together in Ilya's house in Orlando, Florida.

10. I have no business office in California.

11. I have no telephone in California.

12. It would be unreasonable to require me to defend this action in courts within California. I have personally never done business in the State of California; I have never entered into any business arrangements with any of the plaintiffs in the State of California; I have no substantial contacts with the State of California or in the United States; an alternative forum exists for resolving this dispute; I have no on-going connection to or relationship with California; I have only been to California two times in my life; the last time I visited California was in December 1946; since 1978, and upon instruction from my doctor, I have not flown because of health reasons. The burden for me to appear and defend an action in California would be unfair and significant for all of these reasons and given that I am not domiciled in the United States.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 18th day of May, 1994 at CANNES, FRANCE.

/s/ Alexander Salkind
ALEXANDER SALKIND

APPENDIX H

GIPSON HOFFMAN & PANCIONE
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Attorneys for Defendants
Alexander Salkind, Great Krypton Productions, Inc., Kandor Productions, Inc., and Superboy Productions, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JANE CHAPLIN, etc., et al. Plaintiff, vs. ALEXANDER SALKIND, etc., et al. Defendants.	Case No. BC 093733 (Filed May 19, 1994) [Assigned to the Honorable Ricardo A. Torres] DECLARATION OF GAUDENZ F. DOMENIG IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE DATE: June 7, 1994 TIME: 8:30 a.m. DEPT: 64

I, Gaudenz F. Domenig, declare as follows:

1. I am an attorney at law admitted to practice in Switzerland, and in New York. I am a member of Prager

Dreifuss & Partner, Rechtsanwalte (attorneys at law) with offices in Zurich, Switzerland. I serve as Swiss legal counsel to Mr. Alexander Salkind, one of the named defendants in the above-referenced litigation. I make this declaration in support of the motion brought by Mr. Salkind challenging the sufficiency of service of process upon him. If called upon to testify, I could and would testify competently to the facts set forth herein.

2. In November 1993, I learned that Mr. Stephen Chrystie, counsel for plaintiff in this action, had attempted to contact Mr. Salkind regarding a dispute with Jane Chaplin in which I had represented Ms. [sic] Salkind in settlement negotiations with Mr. [sic] Chaplin's former American attorney. On November 18, 1993, I wrote to Mr. Chrystie to advise him that my firm still represented Mr. Alexander Salkind in connection with the dispute then existing between Mr. Salkind and plaintiff, Jane Chaplin. A true and correct copy of my letter of November 18, 1993 is attached hereto as Exhibit 1.

3. In response, Mr. Chrystie responded by letter dated November 18, 1993, with enclosures, a true and correct copy of which are attached hereto as Exhibit 2, asking whether I was "authorized to accept service on behalf of Mr. Salkind." I responded by letter dated November 29, 1983, to Mr. Chrystie, a true and correct copy of which is attached hereto as Exhibit 3, that my office represented Alexander Salkind only, and that we were "authorized to accept service on behalf of Mr. Salkind, provided such service is effected lawfully." In this regard, I explained to Mr. Chrystie that "pursuant to Swiss federal law, it is unlawful to serve, or to instigate the service, or to assist in the service, or to facilitate the

service of papers in foreign proceedings in Switzerland in any other way than through the proper diplomatic channels." I concluded by clearly stating to Mr. Chrystie that "provided that service upon Mr. Salkind is effected in that manner, we will be able to accept it on his behalf."

4. Mr. Chrystie, by letter dated November 29, 1993, a copy of which is attached hereto as Exhibit 4, ignored the express conditions that I had stated regarding the need for service to comply with Swiss law before I could accept it on behalf of Mr. Salkind. Instead, Mr. Chrystie's letter explained that he had merely enclosed a complaint and a copy of the summons in the action then filed in state court, and failed to go through the proper diplomatic channels that are required by Swiss law and of which I had advised Mr. Chrystie in my letter of November 29, 1993, Exhibit 3 attached hereto. Because Mr. Chrystie did not comply with the conditions required by Swiss law, which are applicable to my involvement in any efforts to serve Mr. Salkind, I returned to Mr. Chrystie the complaint and all other documents that he had sent to me under cover of his letter of November 29, 1993, Exhibit 4 attached hereto. I also wrote to Mr. Chrystie a letter dated December 2, 1993, a true and correct copy of which is attached hereto as Exhibit 5, explaining that I was unable to accept service on behalf of Mr. Salkind because Mr. Chrystie did not comply with Swiss law. I returned the document sent to me by Mr. Chrystie under cover of my December 2 letter, Exhibit 5.

5. By letter dated December 3, 1993, attached hereto as Exhibit 6, Mr. Chrystie continued to assert that he had completed service upon Mr. Salkind by mailing documents to me and even went so far as to claim that I was

engaged in "unethical conduct" by my insisting that before I could accept service on behalf of Mr. Salkind, service must be completed as required by Swiss law through proper diplomatic channels. Mr. Chrystie also continued to make threats of defaults if responsive pleadings were not filed.

6. Under Swiss law, in order for me, or my firm, legally to participate in or facilitate the service of process upon Mr. Salkind in connection with this action, which is considered "foreign" under Swiss law, it would have to be presented to me through the appropriate diplomatic channels. Under Swiss local law, I would be guilty of a criminal act if I, or any member of my firm, assisted in any way the service of process of this foreign action within Switzerland. This is so by virtue of Art. 271 of the Swiss Federal Criminal Code of December 21, 1937, (SR 311.0), as amended, which reads as follows (in my own translation):

> Art. 271
>
> Acting without authorization for a Foreign State.
>
> 1. Anyone who, without authorization, takes in Switzerland for a foreign state any action which is within the powers of the public authorities,
>
> Anyone who takes such actions for a foreign party or for any other foreign organization,
>
> Anyone who facilitates such actions, Shall be punished with imprisonment, in serious cases with penitentiary confinement.

7. The provisions of Art. 271 aim to protect the sovereignty of Switzerland. Pursuant to it, acts which are "within the powers of the public authorities" must only be performed by Swiss authorities within the territory of Switzerland (or – in exceptional cases – by agents authorized by the Swiss authorities). Swiss courts of course look to Swiss law to define the kinds of acts that are considered to be acts "within the powers of the public authorities." In Switzerland it is the exclusive domain of the courts to subject someone to the jurisdiction of the court by serving him with process. Accordingly, pursuant to the above-cited provision, whoever "facilitates" the service of process in Switzerland in a lawsuit to be brought in a foreign court violates Art. 271 of the Swiss Federal Criminal Code and commits a criminal offense.

8. Since I, like many lawyers in Switzerland, have in the past on numerous occasions been asked to (and have declined to) assist in the service of process in Switzerland in connection with proceedings to be brought elsewhere, I was very well aware of the restrictions imposed by Art. 271 of the Swiss Federal Criminal Code when I wrote to Mr. Chrystie on November 29, 1993. It is for that reason that I specified that I could not accept service unless effected in a way considered lawful under Swiss law. I also explained to Mr. Chrystie how service could be effected without violating Swiss criminal law. When Mr. Chrystie subsequently chose to ignore the Swiss Federal Criminal Code and attempted to serve process in Switzerland directly anyway, I had no choice but to decline to participate in the unlawful attempt wherefore I returned the purported Summons and Complaint that he had sent me.

9. Switzerland, in the exercise of its own sovereignty, only allows a foreign sovereign to act within Swiss jurisdiction through proper Swiss diplomatic channels. These are well-established principles of international law and comity among sovereign nations. These critical international rules should not be ignored by this court. Mr. Chrystie can properly serve Mr. Salkind and I am still authorized to accept service on behalf of Mr. Salkind provided that service is done in a manner that complies with Swiss law and does not place me or my firm in jeopardy of violating Swiss law. If plaintiff wishes to serve Mr. Alexander Salkind in a manner that does not comply with Swiss law, then I am prohibited from participating in such service in any way.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 18th May, 1994 at Zurich/Switzerland.

/s/ G. F. Domenig
Gaudenz F. Domenig

APPENDIX I

CHRYSTIE & BERLE
A Professional Corporation
STEPHEN CHRYSTIE (State Bar No. 33330)
ELIHU M. BERLE (State Bar No. 44846)
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Attorneys for Plaintiffs Jane Chaplin,
Ilya Salkind and Robert Simmonds

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an Individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, and Individual; et al. Defendants.	Case No. BC 093733 DECLARATION OF BERTRAM FIELDS IN OPPOSITION TO DEFENDANT ALEXANDER SALKIND'S MOTION TO QUASH DATE: September 21, 1994 TIME: 8:30 a.m. DEPT: 64

DECLARATION OF BERTRAM FIELDS

I, BERTRAM FIELDS, declare:

1. I am an attorney at law duly licensed to practice my profession in the Courts of the State of California. I am a partner of Greenberg, Glusker, Fields, Claman &

Machtinger, former attorneys for Jane Chaplin, who is a Plaintiff in the above-captioned case. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

2. On behalf of Ms. Chaplin, on or about April 29, 1993, I caused a letter to be sent via overnight mail to Alexander Salkind in Paris, France. [A true and correct copy of my April 29, 1993 letter is attached hereto as Exhibit "1" and incorporated herein by reference].

3. On or about May 12, 1993, I received a letter from Gaudenz F. Domenig of the law firm Prager Dreifuss & Partners in response to my April 29, 1993 letter to Mr. Salkind. [A true and correct copy of Mr. Domenig's May 12, 1993 letter is attached hereto as Exhibit "2" and incorporated herein by reference]. In his letter, Mr. Domenig informed me that his firm represented Mr. Salkind in connection with the dispute between Ms. Chaplin and Mr. Salkind and that he would accept service of any suit by Ms. Chaplin. Specifically, Mr. Domenig advised me as follows:

> "Should your clients decide to commence legal proceedings against Mr. Alexander Salkind, we are instructed to accept service on his behalf at our offices."

4. Mr. Domenig never withdrew his offer to accept service of process on behalf of Mr. Salkind in any oral or written communication to me or my firm.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of August, 1994, at Los Angeles, California.

/s/ Bertram Fields
Bertram Fields

APPENDIX J

CHRYSTIE & BERLE
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Attorneys for Plaintiffs Jane Chaplin,
Ilya Salkind and Robert Simmonds

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an Individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, an Individual; et al. Defendants.	Case No. BC 093733 **DECLARATION OF JOHN A. SCHULMAN** DATE: September 21, 1994 TIME: 8:30 a.m. DEPT: 64

DECLARATION OF CUSTODIAN OF RECORDS

I, John A. Schulman, declare:

1. That I am Executive Vice President, General Counsel and Secretary of WARNER BROS., a division of Time Warner Entertainment Company, L.P. ("Warner Bros.") and as such am the duly authorized custodian of

records of said corporation and have authority to certify the records attached hereto;

2. That attached hereto are what I am informed and believe to be, based on the business records of Warner Bros., true copies of records of Warner Bros. relating to (a) documents located in California consisting of communications and agreements, and documents referencing those agreements, between Warner Bros. and Alexander Salkind or companies he represents for the period 1988-94; and (b) a list of telephone calls between Mr. Salkind and me, and/or between Bruno Hoeffler and me since January 1, 1993, and a redacted copy of the relevant pages from my phone log referencing those calls.

3. That I am informed and believe: that the records attached hereto were made and kept by Warner Bros. in the ordinary course of its business; that all entries thereon were made at or about the time reflected thereon; that same were relied upon by Warner Bros. in the conduct of its business and were made, kept and maintained in such a manner to assure their reasonable accuracy.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on Sept. 9, 1994 at Burbank, California.

/s/ John A. Schulman
JOHN A. SCHULMAN

APPENDIX K

CHRYSTIE & BERLE
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, etc., et al.; Plaintiffs, vs. ALEXANDER SALKIND, etc., et al. Defendants.	Case No. BC 093733 **DECLARATION OF KATHLEEN N. HENDERSON IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH** Date: September 21, 1994 Time: 8:30 a.m. Dept: 64

I, KATHLEEN N. HENDERSON, declare as follows:

1. I am a paralegal employed by the law firm of Chrystie & Berle, A Professional Corporation, attorneys of record for Plaintiffs Jane Chaplin, Ilya Salkind and Robert Simmonds.

2. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

3. On July 21, 1994 and July 22, 1994, I went to the Microfiche Department located within the Research Library at the University of California at Los Angeles ("UCLA"). During my visit at the Microfiche Department, I viewed on microfiche the Thursday, Friday and Saturday editions of The Los Angeles Times published in December 1978, June 1981, May 1983, November 1985 and August 1992.

4. Thereafter, I obtained a copy of an advertisement published in the Friday, January 10, 1979 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Superman: The Movie"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Superman: The Movie" as it appeared in the Friday, January 10, 1979 edition of the *Los Angeles Times* is attached hereto as Exhibit "1" and incorporated herein by reference.]

5. I obtained a copy of an advertisement published in the Sunday, January 12, 1979 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Superman: The Movie"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Superman: The Movie" as it appeared in the Sunday, January 12, 1979 edition of the *Los Angeles Times* is attached hereto as Exhibit "2" and incorporated herein by reference.]

6. I obtained a copy of an advertisement published in the Thursday, June 25, 1981 edition of the *Los Angeles*

Times for the exhibition throughout Los Angeles, California of the motion picture **"Superman II"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Superman II" as it appeared in the Thursday, June 25, 1981 edition of the *Los Angeles Times* is attached hereto as Exhibit "3" and incorporated herein by reference.]

7. I obtained a copy of an advertisement published in the Thursday, June 16, 1983 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Superman III"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Superman III" as it appeared in the Thursday, June 16, 1983 edition of the *Los Angeles Times* is attached hereto as Exhibit "4" and incorporated herein by reference.]

8. I obtained a copy of an advertisement published in the Friday, June 17, 1983 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Superman III"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Superman III" as it appeared in the Friday, June 17, 1983 edition of the *Los Angeles Times* is attached hereto as Exhibit "5" and incorporated herein by reference.]

9. I obtained a copy of an advertisement published in the Saturday, November 18, 1985 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Santa Claus: The Movie"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Santa

Claus: The Movie" as it appeared in the Saturday, November 18, 1985 edition of the *Los Angeles Times* is attached hereto as Exhibit "6" and incorporated herein by reference.]

10. I obtained a copy of an advertisement published in the Thursday, August 20, 1992 edition of the *Los Angeles Times* for the exhibition throughout Los Angeles, California of the motion picture **"Christopher Columbus: The Discovery"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Christopher Columbus: The Discovery" as it appeared in the Thursday, August 20, 1992 edition of the *Los Angeles Times* is attached hereto as Exhibit "7" and incorporated herein by reference.]

11. I obtained a copy of an advertisement published in the Friday, August 21, 1992 edition of the *Los Angeles Times* for exhibition of the motion picture **"Christopher Columbus: The Discovery"** presented by Defendant Alexander Salkind. [A true and correct copy of the advertisement for "Christopher Columbus: The Discovery" as it appeared in the Friday, August 21, 1992 edition of the *Los Angeles Times* is attached hereto as Exhibit "8" and incorporated herein by reference.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed this 14th day of September, 1994 at Los Angeles, California.

/s/ Kathleen N. Henderson
KATHLEEN N. HENDERSON

APPENDIX L

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an Individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, an Individual; et al. Defendants.	CASE NO. BC 093733 DECLARATION OF ILYA SALKIND IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH DATE: September 21, 1994 TIME: 8:30 a.m. PLACE: Department 64

DECLARATION OF ILYA SALKIND IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH

I, Ilya Salkind, declare and state:

1. I am one of the Plaintiffs in the above-captioned action. For almost twenty-seven years, I have been a

producer of major motion pictures that are distributed throughout the world, including the State of California.

2. All of the major motion pictures with which I have been involved were also produced and/or presented by Defendant Alexander Salkind ("Alexander"), who was not only my controlling producing partner, but also my father.

3. Some of the films that Alexander and I have produced together include THE THREE MUSKETEERS, THE FOUR MUSKETEERS, SUPERMAN: THE MOVIE, SUPERMAN II, SUPERMAN III and, most recently, CHRISTOPHER COLUMBUS: THE DISCOVERY (hereinafter referred to as "the Film"). In addition, Alexander produced SANTA CLAUS: THE MOVIE, BLUEBEARD, THE TRIAL, RAPE OF THE SABINES, SUPERGIRL, THE PRINCE AND THE PAUPER, AUSTERLITZ, CERVANTES, BLACK JACK and THE LIGHT AT THE EDGE OF THE WORLD.

4. During the past twenty-five years, Alexander has also produced numerous other major motion pictures for distribution throughout the world. Of the nine feature films produced by Alexander since 1973, all have been supported financially and distributed by major motion picture studios based in the State of California, including Twentieth Century Fox, Warner Bros. and TriStar Pictures, Inc.

5. The majority, if not all, of the motion pictures produced by Alexander referred to above in paragraph 3, were released, distributed, exhibited and generated revenues in the State of California. In each of those motion pictures, Alexander received credit as producer or presenter.

6. On August 21, 1992, the Film was released, distributed and exhibited in movie theaters throughout the State of California. In January 1993, the Film was released on video cassettes and distributed throughout the State of California. On October 10, 1993, the Film was first exhibited on the Home Box Office channel, which is a channel in cable systems throughout the State of California. The Film produced by Alexander, therefore, generated substantial revenues from the State of California.

7. Throughout my collaboration with Alexander in connection with the financing and production of major motion pictures, I acted as one of Alexander's personal representatives in the State of California. As his representative, Alexander instructed me to maintain steady and continuous contact with the major motion picture studios, talent agencies and entertainment law firms based in the State of California.

8. During our collaboration, I also acted as a representative and agent of Alexander in relation to his interests in several of the corporations and business entities named in this lawsuit as Defendants in order to secure financing and distribution contracts from major motion picture studios located in the State of California.

9. Specifically, pursuant to the express instructions of Alexander, and on a continual basis since approximately 1972, I travelled to the State of California, on behalf of Alexander, and participated in meetings in the State of California, on behalf of Alexander, with motion picture studio executives, above-the-line production personnel (i.e., actors and directors), below-the-line production personnel (i.e., cinematographers, set designers and

lighting technicians), and talent agents. Additionally, I negotiated in the State of California, on behalf of Alexander, with motion picture studio executives, talent agents and entertainment attorneys; and conducted telephone conferences and negotiations, on behalf of Alexander, with motion picture studio executives, talent agents and entertainment attorneys all in the State of California.

10. With respect to all my activities, including all my activities in the State of California, concerning the Film and other films on which I collaborated with Alexander, I always acted as a representative of Alexander under his express direction and control.

11. During my frequent visits to the State of California on business for Alexander, I regularly reported by telephone to Alexander my discussions and meetings with other parties relating to the motion picture productions of Alexander.

12. For example, pursuant to the request of Alexander, I visited the State of California for the business of Alexander related to the motion picture entitled SUPERMAN: THE NEW MOVIE during the following dates: September 27, through October 4, 1990; November 1 through November 11, 1990; December 15 through December 19, 1990. The purpose of my visiting the State of California during that period of time was to participate in: (a) meetings with Terry Semel and Bruce Berman of Warner Bros. for the distribution of the motion picture SUPERMAN: THE NEW MOVIE; (b) meetings with Arnold Rifkin of Triad Agency, Philip Noyce, Stephen Herek, Lewis Teague and Stephen Lisberger with respect to potential directors of

SUPERMAN: THE MOVE [sic]; and (c) meetings with Greg Fonseca concerning production design for SUPERMAN: THE NEW MOVIE. During that period, I also had extended meetings in California with John Badham and his agent to discuss the possibility of Mr. Badham's work as director of the project CHRISTOPHER COLUMBUS: THE DISCOVERY. (True and correct copies of invoices regarding my stays in the State of California during 1990 are attached hereto as Exhibit "1" and incorporated herein by reference.)

13. Pursuant to the requests of Alexander, I travelled to the State of California during the period 1991 through 1992 on business for Alexander with respect to the Film, CHRISTOPHER COLUMBUS: THE DISCOVERY. Specifically, I visited the State of California on the following dates: September 19 through September 21, 1990; March 13 through March 27, 1991; April 15 through April 20, 1991; April 27 through May 5, 1991; June 18 through June 21, 1991; September 11 through September 14, 1991; March 31 through April 3, 1992. (True and correct copies of invoices regarding expenses incurred during my stay in the State of California are attached hereto as Exhibit "2" and incorporated herein by reference.)

14. During my visits to the State of California on business for Alexander referred to in the previous paragraph, I participated in meetings on behalf of Alexander related to the Film with the following: (a) Tom Pollock of Universal Pictures, the Film's potential distributor; (b) approximately twenty executives of Warner Bros., the Film's eventual distributor in the United States; (c) Sydney Pollack and Joe Dante, the Film's potential directors; (d) George Cosmatos, the first director of the Film; (e) John Briley, one of the screenwriters of the Film; (f)

Timothy Dalton, the star contracted to appear in the Film; (g) William Kenney, the production designer for the Film; (h) Warren Cowan and Jeffrey Godzik of Rogers & Cowan, the public relations firm for the Film; (i) Henry Plitt, Roy Aron and Peter Beale of Showscan Corporation; (j) Juan Gil and Consuelo Varella, two Spanish historical advisors for the Film; (k) various art department personnel concerning the Film; and (l) Armand Rubin with respect to the distribution of the Film in the United States, including distribution of the Film in the State of California.

15. During my visits to the State of California, I reported directly to Alexander by telephone as to each and every one of my discussions that I had with various parties concerning the production and distribution of the Film. Alexander and I discussed in detail various issues so that he could make final decisions with respect to all key elements of production, financing and distribution, including matters such as who would act as the screenwriter, director, principal actors and completion bond company of the Film and the flow of the production funds.

16. In addition to visiting the State of California for the business of Alexander, I also had numerous telephone calls to persons located in the State of California for the business of Alexander. For example, in connection with Alexander's production of the Film, I spoke, on behalf of Alexander, with lawyers (Walter Teller); writers (John Briley); directors (Phil Alden Robinson, George Cosmatos, Joe Dante and Sydney Pollack); agents (Arnold Rifkin, Jeff Berg, Peter Rawley, Ross Lister, Josh Liberman, Ron Meyer, Bettye McCartt, Ed Limato, Phil Gersch,

David Gersch and Marie Ryan); camera processors (Roy Aron, Peter Beale and Henry Plitt); set designer (Bill Kenney); actors (Timothy Dalton); musicians (Alan Silvestry); motion picture distributors (Tom Pollock of Universal Studios, Barry Reardon, Rob Friedman, Terry Semel, Bruce Berman, Bob Daly, Dawn Macelwaine, Mike Smith and Joel Wayne of Warner Bros.); public relations (Warren Cowan, Jefrey Godzig, Julie Polks and Dale Olson); press (Army Archerd); travel agents (Wendy Feldman) – all located in the State of California.

17. Additionally, in connection with my work with Alexander on other productions, on behalf of Alexander, I spoke with lawyers, writers, directors, agents, designers, distributors and public relations personnel, all located in the State of California.

18. After most of my conversations concerning Alexander's productions with personnel located in the State of California referred to above, I had discussions with Alexander to report the results of my conversations.

19. In connection with my discussions with Tom Pollock of Universal Pictures, I participated in the negotiations of an agreement, on behalf of Alexander, for above-the-line personnel and distribution of the Film by Universal. Attached hereto as Exhibit "3" and incorporated herein by reference is a true and correct copy of a draft agreement referred to as Exhibit A to the distribution agreement between Salkind and Universal for the distribution of the Film. This agreement was negotiated in the State of California pursuant to the express instructions of Alexander.

20. On or about February 24, 1989, Plaintiff Peter R. Marino instituted an action in the United States District Court, Central District of the State of California, Case No. 89-1127 ER (JRx), against, among other parties, Alexander, Defendant Superboy Productions, Inc. and me, in connection with the television series entitled *Superboy* (the "Marino Action"). [A true and correct copy of the Complaint filed in the Marino Action is attached to the Request for Judicial Notice as Exhibit "2" and incorporated herein by reference.]

21. On or about November 3, 1989, the parties to the Marino Action entered into a written settlement agreement. Among other provisions, the settlement agreement required Alexander to perform his obligations in the State of California, the parties agreed that the settlement agreement was to be interpreted under the laws of the State of California, and any action initiated to enforce settlement shall be brought in County of Los Angeles in the State of California:

> . . . A. Salkind agree[s] to submit to the limited jurisdiction of the State of California and the venue of the United States District Court for the Central District of California or the Superior Court for the State of California, County of Los Angeles. . . .

The settlement agreement was executed by Alexander in his individual capacity. [A true and correct copy of the confidential settlement agreement resolving the Marino Action is lodged under seal with this Court and is incorporated herein by reference.]

22. On or about October 18, 1991, Plaintiffs Entco of America, Inc. and Timothy Dalton brought an action in

Los Angeles Superior Court, West District, Case No. SC012687, against, among other parties, Alexander and me, relating to the Film (the "Entco Action"). [A true and correct copy of the Complaint filed in the Entco Action is attached to the Request for Judicial Notice as Exhibit "15" and incorporated herein by reference.]

23. On or about April 7, 1993, the parties entered into a written settlement agreement to resolve the Entco Action. Among other provisions, the parties agreed that the settlement agreement was to be interpreted under the laws of the State of California. The settlement agreement was executed by Alexander in his individual capacity. [A true and correct copy of the settlement agreement resolving the Entco Action is lodged under seal with this Court and incorporated herein by reference.]

24. As stated above, I was a producer of the Film. As part of my duties and responsibilities for the Film and on behalf of Alexander, I assisted in the negotiation of the agreement to secure Mario Puzo's services as screenwriter. The negotiations took place in 1989 in the State of California, where Mr. Puzo was represented by Bertram Fields, Esq. from the Los Angeles law firm of Greenberg, Glusker, Fields, Claman & Machtinger.

Thereafter, on or about October 26, 1989, Mr. Puzo entered into a written agreement (the "Puzo Agreement") with Defendant Sumaca Film Distribution, Inc. ("Sumaca"), one of the corporations controlled by Alexander, for Mr. Puzo to write the screenplay for the Film. [A true and correct copy of the Puzo Agreement is attached hereto as Exhibit "4" and incorporated herein by reference.]

26. As set forth in the Puzo Agreement, Alexander personally guaranteed the performance of Sumaca under the written agreement with Mr. Puzo.

27. Pursuant to the Puzo Agreement, Alexander and Sumaca agreed to litigate any dispute with Mr. Puzo in the State of California, City of Los Angeles and the Puzo Agreement was to be construed under the laws of the State of California.

28. Along with Alexander, in the 1980's I was a producer of SANTA CLAUS: THE MOVIE. As part of my duties and responsibilities as a producer of SANTA CLAUS: THE MOVIE and on behalf of Alexander, I participated in the negotiation of licensing the merchandising rights for this motion picture, which took place in the State of California.

29. In or about January of 1984, in the State of California, Merchandising Corporation of America, Inc. was granted a license to exploit all of the merchandising rights to SANTA CLAUS: THE MOVIE pursuant to a written agreement. In connection therewith, Defendant Peralta Corporation N.V. ("Peralta"), one of the corporations controlled by Alexander, entered into an indemnity agreement with Merchandising Corporation of America, Inc. (the "Indemnity Agreement"). The Indemnity Agreement was negotiated in the State of California. Additionally, the business operations of Merchandising Corporation of America are based in the State of California.

30. In or about January of 1984, Alexander personally guaranteed the performance of Peralta under the Indemnity Agreement with Merchandising Corporation of America, Inc. [A true and correct copy of the personal

guaranty of Alexander is attached hereto as Exhibit "5" and incorporated herein by reference.]

31. Alexander is a shrewd, sophisticated businessman who conducts his personal business affairs through numerous shell corporations. He has formed various corporations with limited or no assets so that he can conduct his personal business affairs and transfer funds and assets with little public or private scrutiny. These shell corporations are used by Alexander to hide various assets, to move money and assets to various parts of the world, avoid tax liability and to attempt to limit Alexander's personal liabilities for his obligations (including obligations to Plaintiffs) through the subterfuge of purported corporate organizations. The use by Alexander of various shell corporate entities in a manipulative scheme to avoid his obligations in connection with his financing, production and distribution of the Film is a good example. (See Declaration of Robert Simmonds, ¶¶ 42-47.]

32. The various corporations referred to in the Declaration of Robert Simmonds filed concurrently herein, are all businesses owned, dominated and/or controlled by Alexander. These corporations were used by Alexander in connection with his enterprise for the production of the Film. Monies flowed back and forth from these various corporations, and liabilities and assets were transferred among the corporations to suit the momentary [sic] needs of Alexander. The distinctiveness and separation of the various corporate entities have not been maintained by Alexander. Alexander has commingled his personal funds with the funds of the various corporations and has not maintained a separate identity of funds and assets.

33. Alexander was the "presenter" or controlling producer of the Film. In or about December 1991, Alexander asked me to perform services and advance funds relating to the financing and production of the Film. At that time, I entered into an agreement with Alexander under which I agreed to render services and advance funds to and behalf of Alexander in connection with his efforts to produce the Film, in exchange for which Alexander agreed to compensate me at the rate of $10,000.00 per month, repay loans advanced by me to him for the production of the Film, repay expenses incurred by me in connection with the performance of my services for him for the Film and indemnify me for any claims made by creditors of Christopher Columbus Productions, Inc. and Sumaca Film Distribution, Inc. related to the financing and production of the Film. This agreement was confirmed during numerous conversations between Alexander and me during the period 1992 through 1993, including conversations that I had with Alexander while I was in the State of California, negotiating with various parties in connection with the Film and incurring expenses related to securing the financing and distribution and overseeing production of the motion picture. I did in fact perform services for Alexander on the Film, a substantial portion of which services took place in California or in relation to other parties located in California who performed services on the Film.

34. Beginning in July 1992, Alexander breached our agreement by failing and refusing to pay to me the compensation that he agreed to pay of $10,000.00 per month, failing and refusing to repay loans which I made for the production of the Film and failing and refusing to repay

expenses I incurred in connection with my efforts in securing and overseeing financing and distribution production of the motion picture. Additionally, Alexander failed to indemnify me for claims asserted against me in connection with the Film. As of this date, there is due to me from Alexander the sum of $85,000.00 for compensation for services related to the Film; repayment of loans which I made for the production of the Film of $11,150.56; reimbursement of expenses which I incurred in connection with performance of my services related to the Film in the sum of $12,210.33; and indemnification of me for claims asserted against me in connection with the Film in the sum of $108,236.72.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

If called as a witness, I could and would competently testify to all of the foregoing of my own personal knowledge.

Executed September 14, 1994 at Orlando, Florida.

/s/ Ilya Salkind
ILYA SALKIND

APPENDIX M

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Attorneys for Plaintiffs Jane Chaplin,
Ilya Salkind and Robert Simmonds

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an Individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, an Individual; et al. Defendants.	CASE NO. BC 093733 DECLARATION OF ROBERT SIMMONDS IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH DATE: September 21, 1994 TIME: 8:30 a.m. PLACE: Department 64

DECLARATION OF ROBERT SIMMONDS IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH

I, Robert Simmonds, declare and state:

1. For sixteen (16) years, I have been a production executive and co-producer of major motion pictures that

are distributed throughout the world. I am also one of the Plaintiffs in the above-captioned action.

2. A majority of the major motion pictures that I have been involved with were produced by Plaintiff Ilya Salkind ("Ilya") and his father, Defendant Alexander Salkind ("Alexander").

3. Some of the films on which I have served as a production executive or a co-producer on which the Alexander was producer or presenter include SUPERMAN: THE MOVIE, SUPERMAN II, SUPERMAN III, and, most recently, CHRISTOPHER COLUMBUS: THE DISCOVERY (the "Film"). All these films were produced at least in part in the State of California. All these films generated substantial revenues from the State of California.

4. Christopher Columbus Products, Inc. was one of the companies used by Alexander for the production of the Film. On September 15, 1992, Christopher Columbus Productions, Inc. changed its name to Jammer Productions, Inc. and on September 18, 1992, filed a petition for reorganization under Chapter 11 of The Bankruptcy Act. The bankruptcy proceedings were thereafter dismissed in 1993.

5. Attached hereto as Exhibit "1" and incorporated herein by reference is a true and correct copy of Debtor Jammer Productions, Inc.'s ("Debtor") Disclosure Statement for Debtor's Plan of Reorganization in the case of *In re Jammer Productions, Inc.* (U.S.D.C., Delaware, Case No. 92-1191) filed by Debtor's attorneys, Gipson Hoffman & Pancione. This same law firm represents Alexander in

this case. I respectfully request that the Court take judicial notice of Exhibit "1" pursuant to Evidence Code, sections 452 and 453.

6. Exhibit "1," pages 13-14 states as follows with respect to Alexander:

> *Alexander Salkind.* Alexander Salkind served as executive producer of the Film. Due in part to his father's influence, Mr. Salkind has long been a benefactor of the entertainment industry. Among Mr. Salkind's productions are the following films:
>
> | | |
> |---|---|
> | SUPERMAN: THE MOVIE | SUPERMAN II |
> | SUPERMAN III | SUPERGIRL |
> | SANTA CLAUS – THE MOVIE | THE THREE MUSKETEERS |
> | THE FOUR MUSKETEERS | THE PRINCE AND THE PAUPER |
> | BLUEBEARD | AUSTERLITZ |
> | THE TRIAL | CERVANTES |
> | RAPE OF THE SABINES | BLACK JACK |
>
> THE LIGHT AT THE EDGE OF THE WORLD
>
> Ilya Salkind, Alex's son, is also involved in his father's productions including THE THREE MUSKETEERS, THE FOUR MUSKETEERS and SUPERMAN epics. Ilya Salkind served as the producer of the File as is a creditor of the Estate for such services.
>
> It should be noted that Alexander Salkind personally guaranteed payment of certain production costs described in Section 4.5.

7. The majority, if not all, of the motion pictures produced by Alexander, referred to above in paragraph 6, were released, distributed, exhibited and generated substantial revenue from the State of California. In each of

such motion pictures, Alexander received credit as producer or presenter.

8. Alexander was credited as the "presenter" or producer of the Film.

9. On August 21, 1992, the Film was released, distributed and exhibited in movie theaters throughout the State of California. In January 1993, the Film was released on video cassettes and distributed throughout the State of California. On October 10, 1993, the Film was first exhibited on the Home Box Office channel, which is a channel in cable systems throughout the State of California. Thus, the film generated substantial revenues in California.

10. During my collaboration with Alexander, I acted as one of Alexander's personal representatives on my visits to the State of California for the business of Alexander. As his representative, Alexander instructed me to maintain steady and continuous contact with the major motion picture studios, talent agencies and entertainment law firms located in the State of California.

11. During my relationship with Alexander, Ilya and I acted as representatives and agents of Alexander in connection with Alexander's interests in several of the corporations and business entities named herein as Defendants in order to secure financing and distribution of films from major motion picture studios located in the State of California.

12. Specifically, at the express instructions of Alexander, I, on behalf of Alexander, travelled to the State of California on the business of Alexander, participated in meetings in the State of California with motion picture

studio executives, above-the-line production personnel (i.e., actors and directors), below-the-line production personnel (i.e., cinematographers, set designers and lighting technicians) and talent agents. Additionally, I, on behalf of Alexander, negotiated in the State of California with motion picture studio executives, talent agents, entertainment attorneys and numerous other businesses connected with motion picture production; and conducted telephone conferences and negotiations with motion picture studio executives, talent agents, entertainment attorneys and numerous other businesses connected with motion picture production all in the State of California.

13. Pursuant to the express request of Alexander, I visited the State of California and participated in various meetings in California concerning the business of Alexander relating to the motion pictures which he produced as follows:

a. September 27 through October 4, 1990: Meetings with Sidney Kiwitt, Terry Semel and Bruce Berman of Warner Bros. to discuss the draft screenplay of SUPERMAN: THE NEW MOVIE;

b. September 19 through 21, 1990: While Ilya met with Tom Pollock, Chairman of Universal Pictures, to discuss the first draft of the screenplay of CHRISTOPHER COLUMBUS: THE DISCOVERY, I met with Peter Beale of Showscan Corporation to discuss their patented camera process for use in the Film;

c. October 2 and 3, 1990: Meetings with Philip Noyce and Stephen Herek with respect to potential directors of SUPERMAN: THE MOVIE;

d. May 17, 1990 and September 29, 1990: Meetings with Richard Edlund of Boss Film with respect to special effects for SUPERMAN: THE MOVIE;

e. June 18 through 21, 1991: Meetings at Warner Hollywood Studios with George Cosmatos, John Briley, Juan Gil, Consuelo Varella, and Art Department personnel with respect to CHRISTOPHER COLUMBUS: THE DISCOVERY;

f. August 27 through August 29, 1991: Meetings with Bette Smith and Lee Katz of The Completion Bond Company and Hansen, Jacobson & Teller, the attorneys for Christopher Columbus Productions;

g. September 11 through September 14, 1991: Attendance at a Directors Guild of America arbitration involving a dispute between the production company for the Film and George Cosmatos;

h. September 16 through September 18, 1991: Attending Arbitration Hearings involving George Cosmatos and the Film's production company; and,

i. July 15 through July 18, 1992: Meetings with Warner Bros. and Bruno Hoefler, Alexander's personal representative, with regard to the delivery of the Film.

14. During each of my visits to the State of California, I reported directly to Alexander with respect to the meetings and discussions held with various parties concerning the productions that I was then working on for Alexander. In regard to all business issues concerning the productions on which I worked for Alexander, Alexander made the final decisions as to all major elements including the financing, the hiring of above-the-line personnel,

the expenditures of the production, the "final cut" of the production, and distribution of the Film.

15. Attached hereto as Exhibit "2" are copies of invoices representing expenses which I incurred in connection with my visits to the State of California on business for Alexander.

16. In connection with my services for Alexander relating to the Film, I spoke by telephone with the following personnel located in the State of California:

a. Lawyers (Walter Teller and Tom McGuire of Hansen, Jacobsen & Teller);

b. Writers (John Briley);

c. Directors (George Cosmatos);

d. Agents (Peter Rawley, Jeffrey Sanford, Spiros Skouras, Jack Gilardi, Bill Block, David O'Connor, Rosalie Swedlin, Jack Rapke, Rob Sheidlinger, Rhonda Gomez, Marty Bauer, Jeffrey Zimmer, Ron Mardigian, Bob Shapiro);

e. Camera Processors (Roy Aron and Peter Beale of Showscan Corporation);

f. Insurance Agents (Scott Milne and Brian Kingman of Albert G. Rubin);

g. Completion Bond Agents (Bette Smith and Lee Katz of Completion Bond Co.);

h. Designers (Bill Kenney and William Skinner);

i. Casting Agents (Janet Hirschenson, Jane Jenkins, Michael Hirschenson and Vicky Huff);

j. Actors (Tom Selleck, Robert Davi and Benicio de Toro);

k. Distributors (Terry Semel, Bruce Berman, Dawn Macelwaine, Charlotte Kandel, Mike Smith, Liz Maffei, Richard del Belso, Barbara Gross, Rob Friedman, Fred Talmadge and Tom McCormick of Warner Bros.); and

l. Public Relations (Warren Cowan, Jeffrey Godzik and Julie Polks, Dale Olson).

17. Additionally, in connection with my services for Alexander relating to other of his motion pictures, I spoke by telephone with lawyers, writers, directors, agents, designers, special effects personnel and insurance agents in the State of California.

18. After many of my conversations with personnel in the State of California relating to my services for Alexander on Alexander-produced motion pictures, I spoke with Alexander to apprise him of my conversations with California personnel and seek decisions from him on various issues, as specifically set forth below in paragraph 19.

19. In connection with my activities on behalf of Alexander for the production of the Film, I communicate with Alexander not only regularly by telephone, but also by sending memoranda by telecopier directly to Alexander or to his representatives. Attached hereto collectively as Exhibit "3" are true and correct copies of my communications to Alexander with respect to various issues concerning the production of the Film: fax dated

July 19, 1991 from me to Alexander with regard to various production expenses on the Film; fax dated August 22, 1991 from me to Alexander with regard to budget for the Film; fax dated September 22, 1991 from me to Christine O'Brien, assistant to Alexander's personal representative, Bruno Hoefler, with regard to Alexander's agreement for the execution of a promissory note in the amount of $200,000 and Alexander's personal guaranty for expenses relating to the Film; fax dated September 22, 1991 from me to Christine O'Brien with regard to expenses for the Film; fax dated September 22, 1991 from me to Alexander with regard to George Cosmatos and the budget for the Film; fax dated October 14, 1991 from me to Alexander with regard to the budget for the Film and the completion bond; fax dated January 8, 1992 from me to Alexander with regard to cash required to complete the Film; fax dated January 12, 1992 from me to Christine O'Brien with regard to expenses concerning the Film; fax dated February 1, 1992 from me to Christine O'Brien with regard to expenses for the Film; fax dated March 17, 1992 from me to Alexander with regard to a letter requested by Alexander concerning the Film; fax dated March 13, 1992 from me to Alexander with regard to post-production costs of the Film; fax dated September 12, 1992 from me to Bruno Hoefler/Christine O'Brien with regard to the cash flow for Christopher Columbus Productions; fax dated January 14, 1991 from me to Alexander with regard to cash requirements for the Film until the end of February 1991; fax dated May 31, 1991 from me to Bruno Hoefler with respect to a conversation with Alexander concerning cash needs for the production of the Film; fax dated October 18, 1991 from me to Christine O'Brien with

regard to agreement by Alexander to forward funds to cover certain expenses related to the Film; fax dated October 24, 1991 from me to Christine O'Brien with regard to cash needs for the Film; fax dated February 11, 1992 from me to Christine O'Brien with regard to agreement by Alexander to pay certain expenses with respect to the Film; fax dated May 9, 1992 from me to Christine O'Brien with regard to cash distribution relating to the Film as confirmed to Bruno Hoefler and Alexander; fax dated June 19, 1992 from me to Christine O'Brien with regard to funds necessary for production of the Film discussed with Alexander; fax dated July 2, 1992 from me to Christine O'Brien with regard to Alexander's agreement to transfer certain funds for the Film; fax dated July 3, 1992 from me to Christine O'Brien with regard to certain expenses for the Film; fax dated July 22, 1992 from me to Christine O'Brien with regard to approval of Alexander of certain transactions relating to the Film; fax dated July 29, 1992 from me to Christine O'Brien with regard to agreement by Alexander concerning certain expenses related to the Film; fax dated August 12, 1992 from me to Alexander with respect to figures requested by Alexander for discussion; fax dated August 11, 1992 from me to Christine O'Brien with regard to arrangements with Alexander concerning expenses related to the Film; fax dated August 13, 1992 from me to Christine O'Brien relating to a fax sent to Alexander concerning funds required for the production of the Film; fax dated February 25, 1993 from me to Bruno Hoefler with regard to communications with Alexander concerning cash needs; fax dated April 22, 1993 from me to Christine O'Brien with regard to confirmation by Alexander to pay

Great Krypton's (production company for SUPERMAN: THE NEW MOVIE) insurance premiums; fax dated April 21, 1993 from me to Christine O'Brien with regard to an agreement by Alexander for payment of insurance premiums for Great Krypton; fax dated April 12, 1993 from me to Christine O'Brien with regard to request for authorization by Alexander to send money for payment of expenses of Great Krypton Productions; fax dated March 14, 1993 from me to Christine O'Brien with regard to discussion with Alexander concerning transfer of funds for Great Krypton; fax dated December 3, 1992 from me to Christine O'Brien with regard to Alexander's agreement to send funds for Great Krypton; fax dated February 24, 1993 from Bruno Hoefler to me with regard to a telephone conference with Alexander, "our mutual friend," concerning the transfer of funds for Great Krypton; fax dated December 10, 1992 from me to Alexander with regard to expenses for Great Krypton; fax dated November 25, 1991 from Bruno Hoefler to me with regard to a conversation with Alexander concerning the deposit of the negative material of CHRISTOPHER COLUMBUS in the name of Peel Enterprise Ltd.; fax dated October 16, 1990 from Christine O'Brien to me concerning a conversation with Alexander with respect to the cash requirements of Christopher Columbus Productions; fax dated February 19, 1992 from me to Christine O'Brien with regard to confirmation by Alexander of his consent concerning the payment of certain funds with respect to the Film; fax dated February 13, 1992 from me to Christine O'Brien with regard to confirmation from Alexander with regard to payments for the Film; fax dated December 3, 1991 from me to

Pueblo Films A.G. (Bruno Hoefler) concerning Alexander's approval of payment of $80,000 to Albert Ruben for the second installment of the insurance premium for the Film; fax dated June 9, 1992 from me to Barbara Koeppel, Bruno Hoefler's assistant, relating to the approval by Alexander of payment of certain sums for the Film; fax dated February 8, 1992 from me to Alexander with regard to certain payments for the Film; fax dated February 8, 1992 from me to Christine O'Brien with regard to certain payments for the Film; fax dated August 19, 1992 from Lino Mintoff of the Malta Investment Management Company to me regarding a conversation with Alexander concerning ironing out issues with regard to the financing of the Film; letter dated September 17, 1991 from The Completion Bond Co., Inc. in Los Angeles addressed to Alexander and me at the Beverly Hills Hotel with regard to a completion bond guaranty for the Film; letter dated September 29, 1991 from The Completion Bond Co., Inc. in Los Angeles to Alexander in Munich with regard to a completion bond guaranty for the Film; fax dated May 16, 1992 from John Briley in Los Angeles to Alexander c/o Robert Simmonds with respect to the length of the Film; fax dated May 20, 1992 from John Briley in Los Angeles to Alexander c/o Robert Simmonds with regard to a change in the script of Film; and fax dated April 10, 1992 from me to Christine O'Brien with regard to an agreement with Alexander for payment to the Kraft Agency relating to the Film.

20. After my transmission of each of the faxes set forth above, I had personal direct telephone conversations with Alexander concerning the subject matter of the faxes. During those conversations, Alexander instructed

me what action to take with respect to the subject matter of the faxes and then Alexander took action himself based on the faxes and the conversations he had with me. For example, when there was a request for funds for the continuation of the production of the Film, Alexander made arrangements to have funds sent to me. At all times during these conversations, I was acting under the express instruction, direction and control of Alexander. Many of the instructions given to me by Alexander related to meetings, discussions and actions I was to take on behalf of Alexander, in the State of California, as referred to above.

21. As stated above, I was the co-producer of the Film. In or about January of 1991, I was granted a power of attorney by Sumaca Film Distribution, Inc. ("Sumaca"), one of the corporations formed and controlled by Alexander. As part of my duties and responsibilities as one of the co-producers of the Film, I assisted in the negotiation of an agreement to secure the services of John Glen as director of the motion picture. I negotiated directly with Mr. Glen's agent, Spiros Skouras, who is based in the State of California.

22. On or about June 10, 1992, Mr. Glen was hired to direct the Film pursuant to a written agreement with Sumaca (the "Glen Agreement"). I executed the Glen Agreement on behalf of Sumaca. [A true and correct copy of the Glen Agreement is attached hereto as Exhibit "4" and incorporated herein by reference.]

23. Alexander personally guaranteed the performance of Sumaca under the written agreement with Mr.

Glen. [A true and correct copy of the Alexander's personal guaranty is attached hereto as Exhibit "5" and incorporated herein by reference.]

24. Pursuant to the Glen Agreement, Alexander and Sumaca agreed that the contract was to be construed under the laws of the State of California.

25. After the Glen Agreement was entered into, a dispute arose between the parties. On or about April 26, 1993, the parties, including Alexander in his individual capacity, entered into a written settlement agreement to resolve the dispute with respect to the Glen Agreement. Among other provisions, the parties agreed that any action brought to enforce the settlement agreement must be brought in the State of California and that the settlement agreement was to be interpreted under the laws of the State of California. Additionally, Alexander agreed to consent to the service of process in any State of California action brought to enforce the settlement agreement. The settlement agreement was executed by Alexander in his individual capacity. [A true and correct copy of the settlement agreement resolving the dispute under the Glen Agreement is attached hereto as Exhibit "6" and incorporated herein by reference.] I am informed and believe that a fully executed copy of the settlement agreement is currently on file with the Director's Guild of America in the City of Los Angeles, State of California.

26. In or about January of 1990, I was provided with a power of attorney by Christopher Columbus Productions, Inc., one of the corporations created by Alexander to facilitate the business of producing the Film.

27. As part of my duties and responsibilities as a co-producer and at the express request and instruction from Alexander, I was requested to secure and maintain an insurance policy in connection with the production of the Film. Before production of the motion picture began, I secured an insurance policy on behalf of Christopher Columbus Productions, Inc. with Albert G. Ruben & Co., which is an insurance broker located in the City of Los Angeles, State of California.

28. In connection with issuance of the insurance policy covering the production of the Film, Albert G. Ruben & Co. required the personal guaranty of Alexander for the payment of premiums in the State of California.

29. On or about May 19, 1992, Alexander signed a personal guaranty to secure the promise of the payment of premiums in the State of California for the insurance policy covering the production of the Film. [A true and correct copy of the personal guaranty of Alexander is attached hereto as Exhibit "7" and incorporated herein by reference.]

30. Since its inception, I have been an authorized agent and representative of Defendant Kandor Productions, Inc. ("Kandor"). Kandor was one of the corporations created by Alexander in order to facilitate the business of producing the "Superman" motion pictures series. On March 1, 1990 and March 1, 1991, I was granted power of attorney for Kandor. I was also one of the producers responsible for overseeing the development and writing of the screenplay for SUPERMAN: THE NEW MOVIE.

31. From the inception of Kandor, Schuyler M. Moore, Esq., who was the corporate attorney for Kandor, held the corporate office of Secretary. [A true and correct copy of the 1990 and 1991 Annual Franchise Tax Reports of Kandor are attached to the Request for Judicial Notice as Exhibits "10" and "17," respectively, and incorporated herein by reference.] During his tenure as Secretary of Kandor, Mr. Moore was an attorney who practiced law in the State of California, based in the City of Los Angeles.

32. Since the incorporation of Kandor, Mr. Moore communicated orally and in writing with me regarding the corporate and business activities of Alexander conducted through Kandor. From the State of California, City of Los Angeles, Mr. Moore served as Secretary for Kandor for over two years and assisted in conducting the business affairs of Alexander and Kandor until his resignation.

33. Since its inception, I have been an agent and representative of Defendant Great Krypton Productions, Inc. ("Great Krypton"). Great Krypton was another corporation created by Alexander in order to facilitate the business of producing the Superman motion pictures. On August 31, 1990 and September 3, 1991, I was granted power of attorney by Great Krpyton.

34. As with Kandor Productions, Inc., the Los Angeles attorney, Mr. Moore, was the corporate attorney and Secretary of Great Krypton for over two years. [A true and correct copy of the 1990 and 1991 Annual Franchise Tax Reports of Great Krypton are attached to the Request for Judicial Notice as Exhibits "11" and "18", respectively, and incorporated herein by reference.]

35. Since the incorporation of Great Krypton, Mr. Moore was in contact with me regarding the corporate and business activities of Alexander conducted through Great Krypton. From the State of California, City of Los Angeles, Mr. Moore assisted in conducting the business affairs of Alexander and Great Krypton until his resignation after serving over two years as Secretary for Great Krypton.

36. Since its inception, I have been an authorized agent and representative of Defendant Superboy Productions, Inc. ("Superboy"). Superboy was one of the corporations created by Alexander to facilitate the business of producing the television series entitled *Superboy*. I was the line producer responsible for all aspects of production for the television series entitled *Superboy*.

37. As with Kandor Productions, Inc. and Great Krypton Productions, Inc., the Los Angeles attorney, Mr. Moore, held the office of the Secretary of Superboy and acted as its corporate attorney. [A true and correct copy of the 1988 and 1990 Annual Franchise Tax Reports of Superboy are attached to the Request for Judicial Notice as Exhibits "4" and "12" respectively, and incorporated herein by reference.]

38. Since the incorporation of Superboy, Mr. Moore was in contact with me regarding the corporate and business activities of Alexander and Superboy. From the State of California, City of Los Angeles, Mr. Moore served as Secretary for Superboy for over five years and assisted in conducting the corporate affairs of Superboy until his resignation.

39. In his recently published autobiography, Marlon Brando describes the control by Alexander of the Film:

> Everything was fine until Ilya's father, Alexander Salkind, arrived in Spain on the first day of filming . . . When he read my script, he refused to use it and insisted on sticking with the original story which was idiotic, untruthful and uninteresting. It was a big mistake because the picture was a huge failure.
>
> I was depressed and wanted to go home, but I knew Alexander would sue me if I backed out of my contract . . .

Attached hereto as Exhibit "8" and incorporated herein by reference are pages 440-442 of Marlon Brando's autobiography entitled BRANDO – SONGS MY MOTHER TAUGHT ME.

40. Mr. Brando's observations of Alexander's control and domination of the production of the Film, to the point of dictating content of the screenplay, are confirmed by my own observations.

41. Alexander is a very sophisticated and manipulative businessman who conducts his personal business affairs through various dummy corporations. He has formed numerous corporations with limited or minimum assets so that he can conduct his personal business affairs and maneuver funds and assets with little tracing. These shell corporations are used by Alexander to hide various assets, to move money and assets to various parts of the world, avoid tax liability and to attempt to limit Alexander's personal liabilities for his obligations (including obligations to Plaintiffs) through the subterfuge of shell corporations.

42. The use by Alexander of various shell corporate entities in a manipulative scheme to avoid his obligations in connection with his financing, production and distribution of the Film CHRISTOPHER COLUMBUS: THE DISCOVERY is a good example.

43. Debtor's Disclosure Statement for Debtor's Plan of Organization filed by Alexander's lawyers herein, Gipson Hoffman & Pancione, in the case of *In re Jammer Productions, Inc. (fka Christopher Columbus Productions, Inc.)*, (Case No. 92-1191 U.S. Bankr. D. Del. 1992) attached hereto as Exhibit "1," provides some interesting information about Alexander and his shell corporations with respect to the financing, production and distribution of the Film:

> A. Jammer Productions, Inc., formerly known as Christopher Columbus Productions, Inc., was incorporated in 1989 and "formed to act exclusively as a United States service company to produce the motion picture 'Christopher Columbus – The Discovery' (the 'Film') for its corporate parent, Christopher Columbus Productions, N.V. ('CCPNV'), which is based in the Netherlands Antilles." (Ex. 1, p. 10)
>
> B. Christopher Columbus Productions, N.V. ("CCPNV"), formed in 1989, is a "limited liability company established in Curaçao, Netherlands Antilles . . . The directors of CCPNV are Kingfield Management Corporation ('Kingfield'), a Panamanian corporation, and Tarma Trust Management, N.V., a corporation organized and existing in the Netherlands Antilles." (Ex. 1, pp. 11-12) "CCPNV purchased 100% of

the issued and outstanding stock of [Christopher Columbus Productions, Inc.] for the sum of $10,000." (Ex. 1, p. 11).

C. Kingfield Management Corporation – Alexander maintains the power of attorney for Kingfield. (See Testimony of Alexander Salkind set forth in the Declaration of Elihu M. Berle, ¶ 20, line 1.)

D. IDA Investment A.V.V., which was formed on March 7, 1989, is the sole shareholder of CCPNV "and is a corporation organized and existing under the laws of Aruba." (Ex. 1, p. 12).

E. Sumaca Film Distribution, Inc. ("Sumaca") is a Delaware corporation whose "shares are held by Defendant Bruno Hoefler, the principal of Pueblo Film Consultancy A.G." (Ex. 1, p. 12). Bruno Hoefler has been Alexander Salkind's representative since 1971. (See Tr. Vol. II, p. 35, line 14 – p. 36, line 8 as contained in Ex. "1" to the Declaration of Elihu M. Berle.) Sumaca originally held all the rights to the screenplay for the Film (Ex. 1, p. 12), and entered into an agreement with Mario Puzo to write the screenplay for the Film (as contained in Ex. "4" to Declaration of Ilya Salkind).

F. Pueblo Film Consultancy A.G. ("Pueblo") is a Swiss company which served as a "consultant" to CCPNV in connection with the Film. Pueblo's business includes (a) setting up company structures and incorporating companies (b) company administration (c) distribution services (d) cash management/troubleshooting and (e) licensing services (Ex. 1, p. 14).

G. Peel Enterprises Ltd. ("Peel") – financing for the Film was provided by Peel pursuant to a

written agreement with CCPNV. Peel filed a UCC 1 Financing Statement in the State of California on May 20, 1992 (Ex. 1, p. 14). [See also, Request for Judicial Notice, Exhibit "20" attached thereto.]

44. The various corporations enumerated above are all businesses owned, dominated and/or controlled by Alexander. These corporations were used by Alexander in connection with his enterprise for the production of the Film. Monies flowed back and forth from these various corporations, and liabilities and assets were transferred among the corporations to suit the momentary needs of Alexander. The distinctiveness and separation of the various corporate entities have not been maintained by Alexander. Alexander has commingled his personal funds with the funds of the various corporations and has not maintained a separate identity of funds and assets. In essence, the various corporations are different pockets of the same suit of clothes worn by Alexander.

45. The calculated scheme by Alexander to use various shell corporate entities and move assets among the sham corporations is demonstrated by the following. On or about November 25, 1991, Alexander and his representative and adviser, Bruno Hoefler, telephoned me. During that conversation, Alexander stated to me that he wanted to protect the Film from being attached or levied upon by creditors. He told me that he made arrangements to have the title to the negative of the Film transferred to the name of an Irish company controlled by him called Peel Enterprises Ltd., and instructed me to have the negative of the Film stored in the name of "Peel" at Technicolor Laboratory in London, England. Mr. Hoefler then told me

that he would be a managing director of Peel and, and [sic] on behalf of Alexander, he instructed me to write a letter on behalf of Peel to Technicolor.

46. Attached hereto as Exhibit "9" and incorporated herein by reference is a true and correct copy of a fax to me from Bruno Hoefler, Alexander's personal representative and agent, on the letterhead of Mr. Hoefler's company, Pueblo Film, dated November 25, 1991. In the memo Mr. Hoefler states to me:

> I just spoke to Alex and explained to him the urgency of the issue of our conversation this afternoon. He agrees and has already worked to speed up the movements. I hope to be able to arrange already tomorrow the transfer to you.
>
> However, he has insisted and made it a condition precedent to the above that you confirm to me in writing that the negative material is deposited as of today in the name of Peel Enterprises Ltd. and that you also arrange that with immediate effect the material previously deposited with Technicolor is transferred to Peel.
>
> . . . In the first instant such note will not have the aval [guarantee] from Alex but will thereafter he [sic] exchanged against one with the aval [guarantee]. However, I would need a written confirmation from Technicolor they're holding the material in the name of Peel. . . .

47. Attached hereto as Exhibit "10" and incorporated herein by reference is a copy of a letter dated November 26, 1991 which I sent on behalf of Peel, at the express instruction of Bruno Hoefler and Alexander, to

Simon Baxter of Technicolor. In said letter, I state as follows:

> This letter confirms that this company (Peel) is the legal owner of the entire production negative of the Film "Christopher Columbus – The Discovery" including any negatives previously held in the name of any other company.
>
> * * *
>
> Any reference to that agreement to Christopher Columbus Productions, Inc. should be deleted and replaced by reference to Peel Enterprises Ltd.

48. In connection with my work on the Film, I expended a substantial amount of time and effort over the years 1991-1993. As set forth in detail above, a significant amount of time was spent in the State of California negotiating with various parties concerning the creation, financing and production of the Film.

49. Prior to June 1991, I had entered into agreements with Alexander for the performance of services by me on various productions of Alexander in exchange for which Alexander agreed to pay me regular compensation and deferred compensation. In June 1991, I entered into a new agreement with Alexander pursuant to which I agreed to perform additional services on his productions, including specifically the Film Christopher Columbus, in exchange for which he agreed to pay me, commencing in July 1992, my deferred compensation and additional compensation. A substantial portion of those services, concerning the Film and other productions, were performed in California or in relation to other parties who were in California. As part of my agreement with Alexander,

Alexander agreed to indemnify me from any claims that could be made against me in connection with the contemplated production of the Film. This agreement with Alexander was reaffirmed by Alexander on numerous occasions, including while I was in California on business for Alexander, during and after the production and distribution of the Film.

50. Although Alexander did make some payments under this agreement, Alexander has failed to pay me the sum of $716,210 due under the agreement. Alexander has breached his agreement with me concerning compensation and indemnification with respect to the Film. As a result of his breach, there is due compensation from Alexander to me of the sum of $716,210 for work I did in connection with the motion picture, and approximately $800,000 with respect to indemnification by Alexander for me for claims asserted against me in connection with the Film.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

If called as a witness, I could and would competently testify to all of the foregoing of my own personal knowledge.

Executed this September 14, 1994 at Orlando, Florida.

/s/ Robert Simmonds
ROBERT SIMMONDS

APPENDIX N

CHRYSTIE & BERLE
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Attorneys for Plaintiffs Jane Chaplin,
Ilya Salkind and Robert Simmonds

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an Individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, an Individual; et al. Defendants.	Case No. BC 093733 DECLARATION OF JOEL KABAKOFF AND NOTICE OF LODGING IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTIONS TO QUASH Date: September 21, 1994 Time: 8:30 A.M. Dept: 64

I, JOEL KABAKOFF, declare:

1. I am a paralegal employed by Chrystie & Berle, A Professional Corporation, attorneys of record for plaintiffs Jane Chaplin, Ilya Salkind and Robert Simmonds. I am not a party to the action herein.

2. On July 31, 1994, I purchased a videocassette copy of the motion picture entitled "Santa Claus: The Movie," at the Music Plus Store located at 4560 Van Nuys Boulevard, Sherman Oaks, California. [A copy of the videocassette is lodged concurrently herewith and a true and correct copy of the videocassette case cover for "Santa Claus: The Movie," indicating Defendant Alexander Salkind as a presenter and/or producer, is attached hereto as Exhibit "1" and is incorporated herein by reference.]

3. On August 5, 1994, I purchased videocassette copies of the motion pictures entitled "Superman: The Movie," "Superman II," "Superman III," and "Christopher Columbus: The Discovery" at Tower Video located at 14612 Ventura Boulevard, Sherman Oaks, California. [Copies of the videocassettes are lodged concurrently herewith and true and correct copies of the videocassette case covers for "Superman: The Movie," "Superman II," "Superman III," and "Christopher Columbus: The Discovery," indicating Defendant Alexander Salkind as presenter and/or producer, are attached hereto as Exhibits 2 through 5 respectively.

4. On August 28, 1994, I purchased a videocassette copy of the motion picture entitled "Supergirl" at Tower Outlet located at 14621 Ventura Boulevard, Sherman Oaks, California [A copy of the videocassette is lodged concurrently herewith and a true and correct copy of the videocassette case cover for "Supergirl", indicating Defendant Alexander Salkind as a presenter and/or producer, is attached hereto as Exhibit "6" and is incorporated herein by reference.]

5. On September 10, 1994, I purchased a videocassette copy of the motion picture entitled "The Four Musketeers" at Blockbuster Video located at 14936 Ventura Boulevard, Sherman Oaks, California. [A copy of the videocassette is lodged concurrently herewith and a true and correct copy of the videocassette case cover for "The Four Musketeers," indicating Defendant Alexander Salkind as presenter and/or producer, is attached hereto as Exhibit "7" and is incorporated herein by reference.]

6. On September 13, 1994, I rented a videocassette copy of the motion picture entitled "The Three Musketeers" at The Wherehouse located at 5150 Van Nuys Boulevard, Sherman Oaks, California. [A copy of the videocassette is lodged concurrently herewith and a true and correct copy of the videocassette case cover for "The Three Musketeers," indicating Defendant Alexander Salkind as presenter and/or producer, is attached hereto as Exhibit "8" and is incorporated herein by reference.]

If called as witness, I would competently testify to all of the foregoing of my own personal knowledge.

Executed September 13, 1994 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Joel Kabakoff
Joel Kabakoff

APPENDIX O

CHRYSTIE & BERLE
A Professional Corporation
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JANE CHAPLIN, an individual; et al. Plaintiffs, vs. ALEXANDER SALKIND, aka ALEJANDRO SALKIND, an individual; et al. Defendants.	Case No. BC 093733 **DECLARATION OF WALTER S. TELLER** DATE: September 21, 1994 TIME: 8:30 a.m. DEPT: 64

DECLARATION OF WALTER S. TELLER

I, WALTER S. TELLER, hereby declare and state as follows:

1. I am a resident of Los Angeles County and I am a partner in the law firm of Hansen, Jacobson, Teller & Hoberman. I make this Declaration based upon personal knowledge.

2. Attached hereto as Exhibit "A" is a list, based upon phone logs maintained in the ordinary course of business by my law firm, of all telephone conversations that I had with Alexander Salkind from January, 1989 through July, 1994. In each of these telephone conversations, Mr. Salkind was acting in his capacity as a representative of my law firm's clients, Cantharus Productions, N.V., and Christopher Columbus Productions, N.V. In each of these telephone conversations, Mr. Salkind was in a foreign country and not in the United States. In each of these telephone conversations, I was in Los Angeles County, either at my law firm in Beverly Hills or at some other location.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of September, 1994, at Beverly Hills, California.

/s/ Walter S. Teller
WALTER S. TELLER

APPENDIX P

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JANE CHAPLIN, etc., et al. Plaintiff, vs. ALEXANDER SALKIND, etc., et al. Defendant.	Case No. BC 093733 DECLARATION OF ALEXANDER SALKIND IN SUPPORT OF THE MOTIONS OF SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, PEEL ENTERPRISES, LTD., AND JAMES LANYON TO QUASH FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS' EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS

Date: September 21, 1994
Time: 8:30 a.m.
Dept: 64

(Filed Sept. 19, 1994)

I, Alexander Salkind, do hereby declare:

1. I am an individual defendant in the above-referenced action and make this declaration in support of my Motion to Quash Service for Lack of Personal Jurisdiction and Improper Service. The following facts are personally known to me and if called upon to testify in this matter, I could and would testify competently thereto.

2. Over the years I have been involved as the producer in a number of motion pictures. With respect to each of these motion pictures, the activities of financing, producing and exploiting the motion pictures were done by such companies, corporations and other business entities as my legal, business and tax consultants advised me to establish. In structuring these activities through corporate and other legitimate limited liability entities for the production and exploitation of motion pictures, the overall business goals were to minimize the possibility of personal liability to investors, and individuals, including myself and my family, and to minimize costs, including tax costs, involved in the financing, production, and exploitation of the various motion pictures. This is common and proper business practice.

3. I have only been present in the State of California twice for one month each time in 1945 and again in 1946. I have never had any apartment, home, office, bank

accounts, telephone line or mailbox address in the State of California.

4. I have not been in the United States since 1983.

5. None of the plaintiffs Jane Chaplin ("Chaplin"), Ilya Salkind ("Ilya"), and Robert Simmonds ("Simmonds"), are residents of California. To the best of my knowledge, Chaplin, a U.K. citizen, is a resident of Switzerland, and Chaplin, Ilya and Simmonds all reside in the State of Florida.

6. No part of the film *Christopher Columbus: The Discovery* (the "Film") was filmed in the State of California. In fact, the Film has a Certificate of Origin from the United Kingdom. A true and correct copy of the Certificate of Origin is attached hereto as Exhibit "A" and incorporated herein by this reference as if set forth herein in full.

7. None of the companies that were involved in the production of the Film are registered in California. None of those companies have a business address in California. Christopher Columbus Productions, N.V. ("CCPNV") was the main production company of the Film. CCPNV is based in the Netherlands Antilles.

8. I was the president of Kingfield Management Corporation ("Kingfield"), which had two other managing directors. Kingfield was one of the two directors of CCPNV.

9. Sumaca was a fiduciary of CCPNV and I had the ability to request that Sumaca do things on behalf of CCPNV with respect to the Film.

10. I do not nor have I ever controlled Pueblo Film Consultancy, A.G., nor Pueblo Film Distribution, A.G., nor Bruno Hoefler.

11. I did not form or control Sumaca Film Distribution, Inc., and I am not a shareholder or director of that company.

12. I have never been a director, officer, shareholder, or employee of Showsure, and I do not control Showsure.

13. Ilya and Simmonds were employed by Christopher Columbus Productions, Inc. ("CCPI"), a wholly-owned subsidiary of CCPNV. On behalf of CCPNV, I agreed to Ilya's and Simmonds' employment by CCPI during negotiations in Paris, not in the United States.

14. Peel Enterprises, Ltd. ("Peel") lent money to make the Film, but never invested in the Film. I do not have any ownership interest in Peel. I have never been an officer, director, or shareholder and I do not control Peel.

15. Whenever I made any decisions with regard to the Film, such as authorizing the hiring of certain people, I did so on behalf of CCPNV and not as an individual.

16. To my knowledge, I believe that Ilya visited the State of California for business related to the Film but to the extent that he did so, it was not at my specific request but rather within the scope of his employment by CCPI. Ilya did not obtain or receive my specific permission or consent to travel to California for the Film, nor was he obliged or required to do so. None of Ilya's trips to California that he may have made were made for, on or behalf of me personally.

17. I did not ask Ilya to talk to Tom Pollock although I am told that he did so with some frequency.

18. I did not ask Bruno Hoefler to go to California for the Film.

19. I did not have any discussions with Mr. Cosmatos. Those conversations took place in Florida and were between Ilya and Simmonds, not myself. Ilya and Simmonds did not report the substance of any of these conversations to me, except perhaps when something important came up.

20. I never asked Simmonds to visit California for business of Great Krypton Productions.

21. I never personally sent any money to Simmonds in response to the facsimile letters I was shown at my deposition. Every time money was sent in response to the facsimile letters that I was shown at my deposition, I sent the money on behalf of the investors and lenders. I personally never provided funds to Simmonds for the Film.

22. I never dealt with Chaplin while she was in the United States. I only dealt with her when she was in Switzerland.

23. I never received, either before, during or after the Film, any regular compensation for my services.

24. I never spoke to Ilya in the United States about him providing funding for the Film.

25. I never spoke to Ilya while Ilya was in California about compensation for his services.

26. I personally have no relationship with Tarma Trust. I am not an officer, director, or shareholder in

Tarma Trust, which is one of the two managing directors of CCPNV.

27. I have no relationship with Zytrot, but I believe it performed production work. I believe that it is out of business (although it once did business in Spain).

28. Although I did have telephone calls with Walter Teller, an attorney in Los Angeles, during the past five years, in those telephone calls I was acting on behalf of Teller's clients, Cantharus Productions, N.V. and CCPNV. During each occasion of these telephone calls, I was in a foreign country and not in California or the United States. In addition, the volume of telephone calls identified in Mr. Teller's declaration is misleading because the majority of the calls did not result in a conversation between me and Mr. Teller but rather me or him leaving messages for the other in an attempt to reach one another. I have no reason to doubt Mr. Teller's memos or records, and have no records of telephone calls but I do not recall all of the calls listed by him.

29. The law firm of Hansen, Jacobson & Teller was retained by CCPNV and also represented Showsure but never represented me personally.

30. I never retained the attorney Tom McGuire as my personal lawyer.

31. I never retained the law firm of Gang, Tyre, Ramer & Brown to represent me individually.

32. I never hired the law firm of Strook, Strook & Levan to represent any company nor to represent me personally.

33. The only financial matters that Simmonds was responsible for were some of the actual production expenses for the Film. In my opinion, Simmonds' performance of these financial obligations was not competent.

34. I did not instruct or appoint Ilya to act as my personal representative or agent to visit the State of California at any time.

35. I did not instruct or appoint Simmonds to act as my personal representative or agent on visits to the State of California at any time. I did not expressly instruct Simmonds to travel to California for the Film. Furthermore, Simmonds did not report directly to me regarding all of the meetings and discussions he alleges he had with various parties in California.

36. I understand that Simmonds says that I wanted to hide the Film from proper creditors. This is not true. At the insistence of Peel, the lender, the Film negative had to be used as collateral for Peel's loan. In my experience with Film lending, this is a common requirement, and not at all improper.

37. I never signed the document that Schulman provided to the plaintiffs regarding my rendering consulting services to Warner Bros. and I never made such an agreement. I have never rendered, and I am not under any obligations to render, any personal services to Warner Bros.

38. While as producer of various Superman movies I have signed agreements with Warner Bros. regarding Superman rights, I did not sign, nor enter into the document that John Schulman provided to the plaintiffs which

appears to be a proposed agreement among Warner Brothers, D.C. Comics and myself about the Superman pictures.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of September, 1994, at Paris France.

/s/ Alexander Salkind
Alexander Salkind

APPENDIX Q

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JANE CHAPLIN, etc., et al. Plaintiff, vs. ALEXANDER SALKIND, etc., et al. Defendant.	Case No. BC 093733 DECLARATION OF BRUNO HOEFLER IN SUPPORT OF THE MOTIONS OF SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, PEEL ENTERPRISES, LTD., AND JAMES LANYON TO QUASH FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS' EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS

Q2

Date: September 21, 1994
Time: 8:30 a.m.
Dept.: 64

(Filed Sept. 19, 1994)

I, Bruno Hoefler, do hereby declare:

1. I am a named defendant in this lawsuit and an officer of Pueblo Film Consultancy AG and Pueblo Film Distribution AG (collectively "Pueblo Film"). I have personal knowledge of all matters stated herein. If called upon to testify in this matter, I could competently testify thereto under oath.

2. Pueblo Film in general provides administrative and distribution services to numerous individuals and companies in the international film business. Pueblo Film is paid fees for those services pursuant to its agreements with those individuals and entities. I am employed by Pueblo Film, and, as the result of that employment, am directly involved in providing the services for which Pueblo Film is employed. In general, Pueblo Films' services are designed to assist in the production of motion pictures and in the subsequent exploitation and licensing of completed motion pictures. In this regard, and pursuant to the instructions of its clients, Pueblo Film makes arrangements to establish and form companies throughout the world in an effort to minimize the costs of its clients' activities, including administrative costs, tax costs and other costs. Pueblo Film has also rendered such services on behalf of various companies involved with films presented by Mr. Salkind. As an employee of Pueblo

Film, I have been involved in the establishment, organization, and administration of such companies as Christopher Columbus Productions N.V. ("CCPNV"), Christopher Columbus Productions, Inc. (now known as Jammer Productions, Inc.), Sumaca Film Distribution, Inc., Great Krypton Productions, Inc., Superboy Productions, Inc., and Kandor Productions, Inc. As a result of providing such services to these companies on behalf of Pueblo Film, I have personal knowledge of the corporate and financial organizations of these companies and if called upon to testify could testify competently as set forth herein.

3. I have read all the declarations of Robert Simmonds and Ilya Salkind filed herein in support of their opposition to the jurisdictional motions of Alexander Salkind, Peel Enterprises, Ltd. and Mr. Lanyon. As I will explain in this declaration, much of what Ilya Salkind and Bob Simmonds say about the organization and structure of the various companies is simply untrue. They have not been able to state the facts correctly because neither one of them has any personal knowledge, nor have either one of them ever had any personal involvement in the creation, management, or financial affairs of any of the companies they discuss in their declarations.

4. Bob Simmonds has never been an officer or director of any of the companies named either in the complaint on file in this case, or discussed in his declaration. He has never been engaged or involved in the organization or establishment of any of these entities, whether in the United States, the Netherlands Antilles, or elsewhere. He has never been involved in any way with respect to

the corporate reporting or financial corporate accounting for any of the entities he mentions.

5. The only financial matters that Mr. Simmonds has been responsible for have been in connection with the actual production expenses incurred in connection with the production of the film "Christopher Columbus: The Discovery" (the "Film"). Mr. Simmonds' performance of these financial obligations, however, demonstrate his incompetence to make comment on any financial matters regarding any of these companies. The actual cost of producing the Film was approximately $35,000,000. Of that amount of money, Mr. Simmonds, through the power of attorney which he held for Christopher Columbus Productions, Inc. (the United States production service company for Christopher Columbus Productions, N.V., which was responsible for some of the actual production of the Film), was solely responsible for more than $7,000,000. Mr. Simmonds to date has not provided any accounting as to how he spent these sums, and, to date, there is no way to know whether Mr. Simmonds, in fact, spent that amount on the Film, as he was required to do, or whether some of that money was spent by him and/or by others, not for the Film and beyond his authority. The point I wish to make is that Mr. Simmonds is not competent to describe anything regarding the financing of any of the companies discussed. Not only has he had no involvement in those corporate finance matters, but where he did have any involvement in financial matters, he has proven to be unable to accurately account for his financial responsibilities.

6. Ilya Salkind also has no personal knowledge of the matters that he speaks about in paragraphs 31 or 32 of

his declaration. Ilya Salkind had no involvement in the corporate and financial transactions and, for reasons set forth above, to the extent he relies upon Mr. Simmonds, he has no factual basis for any of his statements.

7. The example Bob Simmonds gives in his declaration supposedly to demonstrate his knowledge of financial affairs of various companies and to allege certain wrongdoing or nefarious activity demonstrates how little Mr. Simmonds knows or understands. The transaction he describes involving the conveyance of legal title to the Film physical materials (exposed film, recorded soundtracks, etc.) to Peel Enterprises, Ltd. ("Peel") was completely above board, necessary, and required by Peel in connection with its loan of production funds to CCPNV for the Film. I do not own, control, or in any way dominate Peel. I am not an officer or director of that company. The transaction discussed by Simmonds at paragraphs 45 through 47 of his declaration, is quite simply and properly explained. Peel made a substantial loan to CCPNV to provide some of the production financing for the Film. As security for that loan, Peel negotiated, and obtained from CCPNV certain rights, interests, and legal title in the physical Film materials. This was done solely to assist Peel in securing repayment of its loan. I participated from Zurich, Switzerland, in the documentation of the arrangements with Peel regarding the loan. At no time did anyone representing Peel ever state to me or indicate to me in any way that these requests for security to protect its loan were being done for any reasons other than good, sound business reasons in the motion picture financing industry. The security granted to Peel was well within the common practice of lenders and borrowers in the motion picture

business. The Peel loan was not entered into to defraud or deceive any creditors of CCPNV or of any other person or entity, but rather was done to raise debt financing to complete production of the Film.

8. It is not true that Pueblo Film is "owned, dominated, and/or controlled by Alexander." [Simmonds Decl., ¶ 44]. Alexander Salkind does not and has not ever owned any of the stock of Pueblo Film, is not, and has never been a director, officer, or employee of those companies, and does not and has never "dominated" or "controlled" the operations of those companies. The balance of Mr. Simmond's statements in paragraph 44 of his declaration are simply incorrect.

9. Both Simmonds and Ilya Salkind state in their declarations that the various corporate and business entities created and used in connection with the production of motion pictures for which Alexander Salkind acted as producer, constituted no more than shams and that such companies are mere dummy companies with no function other than to commit frauds upon third parties. These are completely baseless, false statements. All of the companies mentioned in those declarations were properly formed, organized, and managed in accordance with the laws of their respective domiciles. To the best of my knowledge each and every one of them has been adequately capitalized and financed to complete the tasks for which the companies were formed. As is common in the motion picture business, on many occasions, a company would be formed for the single purpose of producing a specific motion picture. For example, CCPNV was established for the single purpose of producing the Film and it did so.

10. Alexander Salkind is not the owner of the rights to the Film, nor to the motion picture "Superman" nor any of the other motion pictures in the Superman series. Mr. Salkind did not personally exhibit, distribute or otherwise exploit the Film, nor any of the other 14 films for which he was the presenter or producer. All of these films including the Film, were distributed by third parties, pursuant to rights granted by the owner of the Film, including Warner Bros., the distributor of the Film.

I declare under penalty of perjury under the laws of the State of California that the foregoing in true and correct and that this declaration was executed on this 19th day of September, 1994 at Los Angeles.

/s/ B. Hoefler
BRUNO HOEFLER

APPENDIX R

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

Civil No. ___

ALEXANDER SALKIND, individually

Petitioner,

vs.

THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES,
(Honorable Ricardo Torres)
(Case No. BC 093733)

Respondent.

PETITION FOR WRIT OF MANDATE AND FOR AN EMERGENCY STAY OF PROCEEDINGS WITH SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES (EXHIBITS LODGED UNDER SEPARATE COVER)

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16	260-262	SPECIALLY APPEARING DEFENDANTS LANYON AND PEEL NOTICE OF MOTION TO QUASH SERVICE OF SUMMONS
17	263-281	SPECIALLY APPEARING DEFENDANTS LANYON AND PEEL MOTION TO QUASH SERVICE OF SUMMONS; MEMORANDUM OF POINTS AND AUTHORITIES
18	282-291	DECLARATION OF JAMES LANYON IN SUPPORT OF MOTION TO QUASH FOR INSUFFICIENT SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION

19	292-378	COMPENDIUM OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS ON BEHALF OF LANYON AND PEEL
20	379-381	[PROPOSED] ORDER GRANTING LANYON'S AND PEEL'S MOTION TO QUASH SERVICE OF SUMMONS
21	382-383	PROOF OF SERVICE OF SUMMONS (FIRST AMENDED COMPLAINT) AND FIRST AMENDED COMPLAINT RE: ALEXANDER SALKIND AKA ALEJANDRO SALKIND, AN INDIVIDUAL
22	384-403	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH OF DEFENDANT SALKIND
23	404-419	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH OF LANYON AND PEEL

24	420-422	PLAINTIFFS' NOTICE OF LODGING OF ORIGINAL SETTLEMENT DOCUMENTS UNDER SEAL IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO QUASH
25	423-501	PLAINTIFFS' COMPENDIUM OF NON-CALIFORNIA AUTHORITIES IN OPPOSITION TO MOTIONS TO QUASH
26	502-509	DECLARATION OF BERTAM [sic] FIELDS IN OPPOSITION TO SALKIND'S MOTION TO QUASH
27	510-560	DECLARATION OF JOHN S. SCHULMAN
28	561-574	DECLARATION OF KATHLEEN N. HENDERSON IN OPPOSITION TO DEFENDANTS' MOTION TO QUASH
29	575-763	DECLARATION OF ILYA SALKIND IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH
30	764-1009	DECLARATION OF ROBERT SIMMONDS IN OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH

31	1010-1012	NOTICE OF LODGING OF CERTIFIED COPY OF DEPOSITION TRANSCRIPTS OF SALKIND IN OPPOSITION TO MOTIONS TO QUASH
32	1013-1024	DECLARATION OF JOEL KABAKOFF AND NOTICE OF LODGING IN SUPPORT OF PLAINTIFFS' OPPOSITION TO MOTIONS TO QUASH
33	1025-1034	DECLARATION OF WALTER S. TELLER
34	1035-1209	DECLARATION OF DAVID E. BOYLE IN SUPPORT OF OPPOSITION TO MOTIONS TO QUASH
35	1210-1499	DECLARATION OF ELIHU M. BERLE IN OPPOSITION TO SALKIND'S MOTIONS TO QUASH
36	1500-1710	PLAINTIFFS' REQUEST FOR COURT TO TAKE JUDICIAL NOTICE IN OPPOSITION TO MOTIONS TO QUASH

37	1711-1722	DECLARATION OF ALEXANDER SALKIND IN SUPPORT OF THE MOTIONS OF SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, PEEL ENTERPRISES, LTD., AND JAMES LANYON TO QUASH FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS' EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS
38	1723-1728	DECLARATION OF SPECIALLY APPEARING DEFENDANT JAMES LANYON IN SUPPORT OF THE MOTIONS OF SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, PEEL ENTERPRISES, LTD., AND JAMES LANYON TO QUASH FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS' EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS

39	1729-1737	DECLARATION OF BRUNO HOEFLER IN SUPPORT OF THE MOTIONS OF SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, PEEL ENTERPRISES, LTD., AND JAMES LANYON TO QUASH FOR LACK OF PERSONAL JURISDICTION, AND IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS' EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS
40	1738-1745	SPECIALLY APPEARING DEFENDANTS ALEXANDER SALKIND, JAMES LANYON, AND PEEL ENTERPRISES, LTD.'S, EVIDENTIARY OBJECTIONS TO PORTIONS OF THE DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS
41	1746-1761	COMPENDIUM OF NON-CALIFORNIA AUTHORITIES CITED IN ALEXANDER SALKIND, JAMES LANYON AND PEEL ENTERPRISES' REPLY BRIEFS IN SUPPORT OF THEIR MOTIONS TO QUASH SERVICE FOR LACK OF PERSONAL JURISDICTION AND INSUFFICIENT SERVICE OF PROCESS

42	1762-1779	SPECIALLY APPEARING DEFENDANT ALEXANDER SALKIND'S REPLY BRIEF IN SUPPORT OF HIS MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION
43	1780-1796	SPECIALLY APPEARING DEFENDANTS JAMES LANYON AND PEEL ENTERPRISES, LTD.'S REPLY BRIEF IN SUPPORT OF HIS MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION
44	1797-1801	NOTICE OF FILING OF ORIGINAL SIGNATURE PAGES FOR DECLARATIONS OF ILYA SALKIND AND ROBERT SIMMONDS IN OPPOSITION TO MOTIONS TO QUASH
45	1802-1804	PLAINTIFFS' NOTICE OF RULING RE (1) MOTIONS TO QUASH AND (2) MOTION FOR SANCTIONS
46	1805-1809	SPECIALLY APPEARING DEFENDANTS NOTICE OF FILING OF ORIGINAL SIGNATURE PAGES FOR DECLARATIONS SUBMITTED IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF PROCESS

47	1810-2054	DEPOSITION TRANSCRIPT OF ALEXANDER SALKIND (VOLUME I)
48	2055-2196	DEPOSITION TRANSCRIPT OF ALEXANDER SALKIND (VOLUME II)
49	2197-2511	EXHIBITS TO ALEXANDER SALKIND DEPOSITION
50	2512-2513	MINUTE ORDER ON FOR MOTION TO QUASH HEARD ON 9/21/94
51	2514-2537	SEPTEMBER 21, 1994 TRANSCRIPT OF PROCEEDINGS
52	2538-2539	NOTICE OF CONTINUED DEPOSITION OF ALEXANDER SALKIND TO 10/3/94
53	2540-2542	NOTICE OF RULING ON ALEXANDER SALKIND'S EX PARTE APPLICATION FOR AN ORDER EXTENDING THE TIME TO BRING A PETITION FOR WRIT OF MANDATE ON THIS COURT'S RULING RE: SALKIND'S MOTION TO QUASH SERVICE AND REQUEST FOR STAY

To The Honorable Justices of the Court of Appeal of the State of California, Second Appellate District:

INTRODUCTION

Petitioner is an individual who is a non-United States citizen residing outside of the United States, and who has not been physically in California since December of 1947. Petitioner has been sued in the instant action brought by three non-U.S. citizens who reside in the state of Florida, alleging breach of certain loan and employment agreements not made in California, not to be performed in California, and not allegedly breached in California. Nevertheless, the trial court held that under the United States Constitution and Code of Civil Procedure § 410.10, it had "general" personal jurisdiction.

Petitioner timely filed a Motion to Quash Service of Summons pursuant to Code of Civil Procedure § 410.10, asserting that the trial court had no personal jurisdiction over him because he, personally, had no "continuous or systematic" contacts with the State of California, and that the court had no "specific" jurisdiction over him because Petitioner had no "minimum contacts" with California out of which the claims alleged in the complaint arose. Petitioner further argued that the mailing of service of process to an attorney in Switzerland who represents Petitioner was not adequate service of process upon him personally.

As a consequence of the trial court's rulings, the Petitioner is faced with either waiving his personal jurisdictional objections by proceeding to defend against the substantive claims in the court below, or defaulting and raising on direct

appeal the issues as to whether or not the trial court had personal jurisdiction over Petitioner. The only remedy that preserves both Petitioner's jurisdictional objections and substantive defenses to the underlying claims is this Petition for Writ of Mandate to require the trial court to enter its order quashing the service of summons pursuant to Code of Civil Procedure § 418.10(c).

After being advised that the Petitioner would seek appellate review of the trial court's jurisdictional decision, real parties-in-interest immediately noticed Petitioner's deposition in California upon the minimum ten days' notice. Real parties-in-interest refused to continue the deposition, despite their knowledge that Petitioner is a 73-year-old individual residing in Europe who does not fly because of health reasons (which is well known to real party-in-interest Ilya Salkind, the son of Petitioner). Petitioner sought a stay of all proceedings against Petitioner in the trial court pending this appellate court's ruling on this petition, but the trial court only continued the noticed deposition of Petitioner to the week of October 17, 1994. Real Parties-in-Interest have also just filed a contempt motion in the trial court set for hearing on October 25, 1994 seeking sanctions against Petitioner and his counsel if Petitioner does not appear at a deposition during the week of October 17th. Insofar as this Petition will be filed on Friday, October 14, 1994, pursuant to the trial court's order, Petitioner now also runs the risk of being forced to default upon obligations in the trial court, or waive his jurisdictional objections. Petitioner therefore requests a stay of all proceedings against Petitioner in the trial court until such time as this appellate court rules on this Petition. The stay would not prejudice real parties-in-

interest because despite the fact that this case was filed in November, 1993, not one of the named Defendants have yet to appear generally in this action.

This Petition is the only opportunity for Petitioner to obtain appellate review and correct the erroneous personal jurisdiction ruling of the trial court without forcing Petitioner to either waive his procedural objections or potentially waive substantive defenses to the meritless claims asserted in the complaint. Moreover, the trial court's decision finding general jurisdiction over Petitioner has severely negative ramifications for the motion picture business and, if applied generally, would find personal, general jurisdiction over non-United States individual producers of motion pictures merely because those motion pictures are distributed in California, or merely because California residents are involved by acting in, or providing other personal services to, motion pictures made outside of the United States.

PETITION

Petitioner alleges as follows by this verified Petition:

1. Petitioner Alexander Salkind ("Petitioner"), individually, hereby petitions this Court for a Writ of Mandate, directing respondent, Superior Court of the State of California, for the County of Los Angeles (hereinafter "Respondent Court") to vacate its September 21, 1994 Order denying Petitioner's Motion to Quash Service of Summons and finding general, personal jurisdiction over Petitioner, with respect to Plaintiffs' First Amended Complaint (hereinafter "FAC") [First Amended Complaint,

Exhibit 5][1], and to enter its order dismissing the FAC as to Petitioner for lack of personal jurisdiction, and for an order staying the proceedings in the court below against Petitioner during the pendency of this Court's review of the instant Petition.

2. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law to compel Respondent Court to quash the service of summons and dismiss the action as to him, because this is the only proceeding authorized by statute to obtain the relief sought. Code of Civil Procedure § 418.10(c); *McCorkel v. City of Los Angeles*, 70 Cal.2d 252, 74 Cal.Rptr. 389 (1969).

A. Parties.

3. Petitioner is one of the defendants in Civil Action No. BC 093733 (hereinafter the "Subject Action"), now pending in Respondent Court, entitled *Jane Chaplin, et al., Plaintiffs, vs. Alexander Salkind, an Individual, et al., Defendants*.

4. The real parties-in-interest are Jane Chaplin ("Chaplin"), an individual, Ilya Salkind ("Ilya"), an individual and the son of Petitioner, and Robert Simmonds ("Simmonds"), an individual. All real parties-in-interest are citizens of countries other than the United States and, to the best of Petitioner's knowledge, currently reside in Florida, although real party-in-interest Chaplin is also a registered domiciliary of Vevey, Switzerland.

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[1] All Exhibits (unless otherwise indicated) are located in the separately bound Exhibit Books filed concurrently herewith and are referenced herein as "Exhibit ___".

B. The Subject Action.

5. The Subject Action names thirty-six defendants in addition to Petitioner. Not one of those defendants have yet generally appeared in the Subject Action, despite the fact that it was originally filed in the trial court in November, 1993. All of the nine individual defendants are non-U.S. citizens and non-residents of the United States or any state or territory thereof. Of the twenty-seven corporate defendants, only four are incorporated in the United States, and none of them are incorporated in California.

6. In November, 1993, real parties-in-interest filed in Respondent Court against this Petitioner as defendant, a Complaint, No. BC 093733, in the file and records of the Respondent Court, for damages arising from the alleged breach of separate oral agreements, which are alleged in the FAC, upon "information and belief," to have been entered into by Petitioner personally with each of the real parties-in-interest. The FAC further alleges that each of those three oral agreements have been breached by Petitioner personally, and that Petitioner fraudulently induced each of the three real parties-in-interest to enter into those oral agreements with Petitioner without any intention to perform those alleged oral agreements. The alleged oral agreement with real party-in-interest Chaplin is for a loan made to Petitioner for use in the financing of the motion picture *Christopher Columbus: The Discovery* (hereinafter *Christopher Columbus*); the alleged oral agreements between Petitioner personally and real party-in-interest Ilya, and real party-in-interest Simmonds, were two separate employment contracts whereby Petitioner allegedly personally agreed to pay certain sums, and

reimburse certain sums, to real party-in-interest Ilya and real party-in-interest Simmonds in connection with their services rendered for the production of *Christopher Columbus*. None of these alleged oral agreements were made in California. (Declaration of A. Salkind ["A. Salkind Decl."] [A. Salkind Decls., ¶ 12, Exhibit 10, p. 100; ¶¶ 3-38, Exhibit 37, pp. 1713-1718.]) None of the oral agreements are alleged to have been breached in California. Neither Petitioner nor real parties-in-interest reside in California. Petitioner is not a citizen of the United States and resides outside of the United States and has not been in California personally since December 1947. [A. Salkind Decl., ¶¶ 3, 4, 5, Exhibit 37, p. 1713.] None of the real parties-in-interest are American citizens, but they reside in Florida, and real party-in-interest Chaplin is registered in the public records of Switzerland as been a domiciliary of Vevey, Switzerland. [A. Salkind Decl., ¶ 5, Exhibit 37, p. 1713.] The motion picture *Christopher Columbus* (a) was not produced or filmed in California; (b) was not filmed anywhere in the United States; (c) is owned by a non-United States company; and (d) has a Certificate of Origination issued by the British Department of National Heritage certifying the film as a United Kingdom Film. [A. Salkind Decl., ¶¶ 6, 7, Exhibit 37, p. 1713-1714.]

7. Petitioner made no general appearance in Respondent Court. On May 19, 1994,[2] Petitioner appeared

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[2] The delay between the purported service of process upon Petitioner and the filing of Petitioner's Motion to Quash Summons and to Dismiss is explained by the fact that the instant action had been removed timely to the United States District

specially in Respondent Court and, pursuant to the provisions of Section 418.10(a) of the California Code of Civil Procedure, moved for an order quashing service of summons and dismissing the action on the grounds that the court lacked personal jurisdiction over the person of Petitioner, and that service of process had not been properly completed upon Petitioner. Copies of Petitioner's Notice of Motion and supporting papers are included as Exhibits 7, 8, 9, 10, 11, 12, 13 and 14 and made a part hereof. Copies of real parties-in-interests opposing papers are included as Exhibits 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 36, and made a part hereof. Copies of Petitioner's reply papers are included as Exhibit 42, and made a part hereof. Respondent Court denied Petitioner's motion on September 21, 1994, and a certified copy of the court's order is included as Exhibit 50, and made a part hereof.

8. A true and correct copy of the transcript of the proceedings at the September 21, 1994 hearing on Petitioner's motion is included as Exhibit 51, and made a part hereof.

9. The reasons given by Respondent Court for finding general jurisdiction over the person of Petitioner are

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Court for the Central District of California, and then was subsequently remanded after real parties-in-interests had dismissed their federal [RICO] claims that had been originally included in the Complaint filed in November, 1993. Plaintiffs dismissed the RICO claim by filing the FAC on January 7, 1994, which merely deleted the cause of action that had previously alleged the federal RICO claim. The action was ultimately remanded to the Respondent Court on April 14, 1994, and Petitioner's Motion to Quash Service of Process and to Dismiss was thereafter timely filed.

both legally and factually insufficient under the United States Constitution is due process clause, and Code of Civil Procedure ¶ 410.10, to find general jurisdiction over the person of Petitioner.

a. Respondent Court's conclusion that Petitioner had personally advertised and distributed nine motion pictures in California is incorrect. There is no evidence, and certainly no substantial evidence, in the record to support this statement. The record is undisputed that unrelated third parties, such as Warner Bros. Inc., distributed in California, as well as elsewhere in the United States, motion pictures, not owned by Petitioner personally, but on which he did receive a producing or presenting credit. [A. Salkind Decl., ¶¶ 37, 38, Exhibit 37, p. 1718.]

b. The conclusion by Respondent Court that Petitioner was in constant contact with an entertainment attorney in California is incorrect and not sufficient to support the finding of general jurisdiction. Petitioner's contact from time to time with Attorney Teller was only in connection with Attorney Teller's representation of certain corporate entities. [A. Salkind Decl., ¶¶ 28, 29, Exhibit 37, pp. 1716-1717; Teller Decl., ¶ 2, Exhibit 33, p. 1026.] Attorney Teller did not represent Petitioner individually. [Teller Decl., ¶ 2, Exhibit 33, p. 1026; A. Salkind Decl., ¶ 29, Exhibit 37, p. 1717.] All of the contacts were telephone conversations and on each and every occasion Petitioner was outside of the United States during those telephone conversations. [Teller Decl., ¶ 2, Exhibit 33, p. 1026; A. Salkind Decl., ¶ 29, Exhibit 37, p. 1717.]

c. Respondent Court concluded that Petitioner often contacts writers and other entertainment people in California. There is no support in the record that Petitioner individually contacted writers and other entertainment people often in California. Indeed, there is no evidence in the record that such contacts were made "often" while Petitioner was acting in any capacity. The record is undisputed that to the extent Petitioner did make such contacts from Europe by telephone or by writing, the contacts were not made in the furtherance of Petitioner's personal business, but rather in connection with the business conducted by foreign corporate entities. [A. Salkind Decl., ¶ 28, Exhibit 37, p. 1716.]

d. Respondent Court stated that Petitioner had entered into an agreement to render personal services as a consultant to Warner Bros. There is no support in the record for this conclusion. Petitioner never entered into any such agreement, and never rendered any personal consulting services to Warner Bros. in California or anywhere. [A. Salkind Decl., ¶¶ 37-38, Exhibit 37, p. 1718.] The Declaration of John Schulman, general counsel of Warner Bros., does not claim that any agreement was ever entered into between Warner and Petitioner for the rendering of personal services by Petitioner. [Schulman Decl., ¶¶ 1-3, Exhibit 27, p. 511.]

e. Respondent Court determined that Petitioner conducted business in California through non-California corporations, and that such business was significant and continuous and was conducted by telephone and fax machines. Even if Petitioner were the owner or beneficial owner of corporations that are doing business in California, due process does not allow such fact to form the

basis for the assertion of judicial, general jurisdiction over the person of Petitioner as an individual. In the instant case, the claims asserted by real parties-in-interest arise out of alleged oral agreements they claim upon "information and belief" to have made directly with Petitioner not with any of the companies claimed to be owned or controlled by Petitioner. Under the United States Constitution, general personal jurisdiction over Petitioner can only be based upon Petitioner doing business as an individual on a continuous and systematic basis in California. That limited liability companies established outside of California, under the laws of other jurisdictions, both within and without the United States, cannot be the basis of California's personal jurisdiction over an individual.

f. Respondent Court further determined that service had been effected upon Petitioner. On November 29, 1993, Petitioner, was purportedly served with summons in the above-described action by mail to a Swiss attorney, Gaudenz Domenig ("Domenig"), of Zurich, Switzerland. Real party-in-interest claims that Domenig has accepted service on behalf of Petitioner, but Domenig and Petitioner contest such claim because Domenig was only authorized to accept service pursuant to the laws of Switzerland and real parties-in-interest did not comply with those laws. [Domenig Decl., ¶¶ 1-9, Exhibit 11, p. 103-108.] The summons was returned to Respondent Court with Proof of Service, a copy of which is included as Exhibit 1, pp. 1-3.

10. Respondent Court has no personal jurisdiction over the Petitioner in the Subject Action, and service of process in the Subject Action has never been properly

made upon Petitioner. In the Respondent Court, real parties-in-interest conceded that the Respondent Court did not have "limited" or "minimum contacts" jurisdiction over Petitioner because, among other reasons, the claims asserted in the FAC did not arise out of any of the alleged contacts of Petitioner to the State of California. Real parties-in-interest argued, and Respondent Court found, that Petitioner personally was doing business in California in such a continuous and systematic way as to be subject to general personal jurisdiction of the courts of this state for any and all claims, as if he were personally present in California. The Respondent Court does not have general jurisdiction, or any jurisdiction over the person of Petitioner, for numerous reasons.

a. Petitioner does not reside, nor is domiciled in California, and has not consented to the jurisdiction of the Respondent Court. [A. Salkind Decl., ¶¶ 3, 4, Exhibit 37, pp. 1713; ¶¶ 2, 8, 12, Exhibit 10, pp. 98-100.]

b. Petitioner was not personally served with process in this action while he was physically present in California. [A. Salkind Decl., ¶¶ 3, 4, Exhibit 37, p. 1713; Domenig Decl., ¶¶ 1-9, Exhibit 11, pp. 103-108.] Petitioner was never served with process in a manner consistent with the California long-arm statute.

c. Petitioner is neither a national nor a citizen of California. [A. Salkind Decl., ¶ 2, Exhibit 10, p. 98.]

d. Petitioner is not doing business in California as an individual at all, and certainly not in a "substantial, continuous and systematic" manner. Petitioner has been sued in the State of California, and settled some such lawsuits, but that fact is not relevant to the analysis of

jurisdiction. *See Core-Vent Corp. v. Nobel Industries A.B., et al.*, 11 F.3d 1482, 1490 (9th Cir. 1993). Petitioner has personally guaranteed certain contracts unrelated to the claims in the FAC, but that fact is not sufficient to justify general personal jurisdiction. *See Mellon Bank (East) PSFS Nat'l Asso. v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992).

e. The causes of action alleged in the First Amended Complaint by real parties-in-interest do not arise out of any contacts with the State of California, and the alleged oral agreements, and the alleged fraudulent inducement to enter into those alleged oral agreements, occurred outside of California and outside of the United States. Those alleged oral contracts were not to be performed in California nor were they breached in California [A. Salkind Decl., ¶ 7, Exhibit 10, p. 98.] No damages claimed in the FAC have occurred in California.

f. The State of California has no interest in providing a forum for the resolution of the disputes among non-residents alleged in the FAC.

11. The assertion of general jurisdiction over Petitioner personally by the Respondent Court violates due process and offends "traditional notions of fair play and substantial justice." *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113, 107 S.Ct. 1026, 1033 (1987). Respondent Court totally failed to make any analysis of this constitutionally-mandated standard. Petitioner has not purposefully established any contacts as an individual with the State of California. Petitioner, a non-U.S. citizen and a non-U.S. resident, has been involved in the production and creation of numerous motion pictures, some of which have been distributed and exhibited in the

United States and in the State of California. However, in all instances, Petitioner has not owned those motion pictures, and has not personally distributed, exhibited or advertised those motion pictures in California or in the United States. If France were to exercise general, personal jurisdiction over Steven Spielberg, a United States citizen, because *Schindler's List* had been exhibited and distributed in France by a French distributor, that action would offend proper notions of fairness and substantial justice. If Stanley Kubrick, a British citizen, was subjected to personal, general jurisdiction in California merely because "2001" and "A Clockwork Orange" were exhibited by California companies in California and California residents performed services for those films, due process notions would be equally offended. Under any analysis of fair play and substantial justice, the assertion of general personal jurisdiction in this case must be reversed. Petitioner is not a United States citizen and has never resided in California or anywhere else in the United States. The last time he was in California was in December of 1947. Petitioner is a 73-year-old man, who is unable to fly in airplanes upon doctors' orders. [A. Salkind Decl., ¶¶ 2, 12, Exhibit 10, pp. 98, 100.] When applying long-arm jurisdiction statutes to a foreign national, the United States Supreme Court has instructed that "the unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi, supra,* at 114, 107 S.Ct. at 1033. Respondent Court did not consider, in any way, the burdens of imposing jurisdiction on a foreign national, and failed to apply the "fair play and

substantial justice" standard or any of the required elements. The State of California simply has no interest in providing a forum for foreign nationals, none of whom reside in California, to resolve a dispute that has absolutely no connection with California, and the resolution of which will require the application of (at least) the law of other states of the United States, as well as the laws of Switzerland and France, where the oral alleged agreements may have been made. [A. Salkind Decls., ¶¶ 3, 4, Exhibit 37, p. 1713; ¶¶ 2, 8, 12, Exhibit 10, pp. 98-100.] Real parties-in-interest did not demonstrate, and did not even attempt to demonstrate, that there is no alternative forum for the dispute they seek to bring to the State of California. Obviously, there are possible alternative forums. It simply cannot be considered a burden upon real parties-in-interest to require them (non-U.S. citizens) to litigate disputes with a non-U.S. citizen outside of the United States, particularly, as here, where the alleged oral agreements were allegedly made and breached, if at all, outside of the United States. [A. Salkind Decls., ¶¶ 3, 4, Exhibit 37, p. 1713; ¶¶ 2, 8, 12, Exhibit 10, pp. 98-100.]

12. In the Respondent Court, Petitioner sought a stay of all proceedings as to Petitioner, including a currently-noticed deposition, until this Court has had an opportunity to rule upon the within petition. Said request was denied by Respondent Court on September 26, 1994. A copy of the Notice of Ruling is attached as Exhibit "A" to the Goodman Declaration attached hereto, and incorporated herein. Petitioner has requested that real parties-in-interest voluntarily forebear from proceeding against Petitioner, including any substantive deposition of Petitioner, until this Court has ruled upon the within petition.

Such request has been denied. Attached as Exhibit "B" to the Goodman Declaration is the exchange of correspondence between counsel. Instead, on October 10, 1994, Real Parties-in-Interest filed a contempt motion against Petitioner and his counsel seeking sanctions against both if Petitioner does not appear at a deposition during the week of October 17th. A copy of the motion is attached as Exhibit "C" to the Goodman Declaration. Accordingly, Petitioner requests that this Court stay all proceedings in Respondent Court against him, until such time as this Court rules on the within petition. Absent such stay, Petitioner will be faced with the unconstitutional choice of either waiving his jurisdictional objections by participating in such discovery, or by refusing to participate in such discovery and subjecting himself to potential sanctions from Respondent Court. No litigant should be forced into such an impermissible Hobson's choice, and the stay requested will not prejudice the interests of real parties-in-interest.

Wherefore, Petitioner prays:

1. That this Court immediately issue an order staying all proceedings against Petitioner in the Respondent Court, including the deposition presently ordered for the week of October 17 - 21, during the pendency of review of this Petition and until such further order of this Court;

2. That this Court issue an alternative writ of mandate directing Respondent Court to make and enter its order quashing the service of summons on this Petitioner and dismissing the action as to him, or to show cause before this Court at a specified time and place why it has not done so;

3. That, on the hearing of this Petition, if any, this Court issue a peremptory writ of mandate directing Respondent Court to so order;

4. For costs of suit herein incurred; and

5. For such other and further relief as the Court may deem proper.

Dated: October 14, 1994

Respectfully Submitted,

GIPSON HOFFMAN & PANCIONE
VINCENT H. CHIEFFO
CHRISTINE CHAMBERS GOODMAN

By: /s/ Vincent H. Chieffo
Attorney for Petitioner
Alexander Salkind
1901 Avenue of the Stars
Suite 1100
Los Angeles, California
90067-6002
(310) 556-4660

VERIFICATION

I, Alexander Salkind, am the Petitioner in the above-entitled proceeding. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: October 14, 1994 /s/ Alexander Salkind
ALEXANDER SALKIND

VERIFICATION

I, Vincent H. Chieffo, am the attorney for Petitioner in the above-entitled proceeding. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. The same is true to the best of my information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: October 14, 1994 /s/ Vincent H. Chieffo
VINCENT H. CHIEFFO

DECLARATION OF CHRISTINE CHAMBERS GOODMAN

I, Christine Chambers Goodman declare:

1. I am one of the attorneys for Petitioner in this proceeding, and represented the Petitioner on the Ex Parte Application for a Stay of Proceedings pending determination of this Petition by this Court, in Respondent Court. The transcript of those proceedings is not available for the reason that ex parte proceedings are not recorded. Nevertheless, a fair summary of those proceedings is as follows:

2. I requested an extension of time until October 21, 1994, to file the writ petition. Real parties-in-interest' counsel objected in the interest of "moving the case along." The Court ordered an extension be granted until October 14, 1994.

3. I then requested a stay of all proceedings against Mr. Salkind during the pendency of his appeal, and informed the Court that Real parties-in-interest had noticed Mr. Salkind's deposition, on substantive issues, for October 3, 1994. The Court stated that he was not going to be reversed on appeal, and that Mr. Salkind's deposition would be continued only until the week of October 17, 1994. A true and correct copy of the Notice of Ruling is attached hereto as Exhibit "A."

4. Real parties-in-interest made further attempts to schedule Mr. Salkind's deposition. True and correct copies of the exchange of correspondence is attached hereto as Exhibit "B." On October 10, 1994, Real parties-in-interest filed a motion for sanctions to compel Mr. Salkind to appear at a substantive deposition. A true and correct copy of the Real parties-in-interest' motion and supporting documents is attached hereto as Exhibit "C."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: October 14, 1994 /s/ Christine Chambers Goodman
CHRISTINE CHAMBERS GOODMAN

MEMORANDUM OF POINTS AND AUTHORITIES

I. ISSUES PRESENTED

A. Are there sufficient contacts between Petitioner personally and the State of California to allow the exercise of general personal jurisdiction over Petitioner with respect to claims that do not arise out of his alleged contacts with California?

B. Does the denial of Petitioner's motion to quash service for lack of personal jurisdiction and insufficient service of process, and the finding of general personal jurisdiction by the trial court violate the Due Process Clause of the United States Constitution and the constitutional requirements of fair play and substantial justice?

C. Is Petitioner entitled to an emergency stay of proceeding against him in the trial court in order to preserve the *status quo* and to avoid a waiver of substantial rights during the pendency of this Court's review of this Petition?

II. THIS COURT SHOULD ISSUE AN ALTERNATIVE WRIT BECAUSE THIS PETITION IS THE EXCLUSIVE PROCEDURE FOR APPELLATE REVIEW OF THE RESPONDENT COURT'S DENIAL OF PETITIONER'S MOTION TO QUASH.

A. This Petition is the Exclusive Remedy.

This Petition for Writ of Mandate is the exclusive method for obtaining review of the trial court's order denying Petitioner's motion to quash service of process without waiving his ability to challenge the substance of the FAC. California Code of Civil Procedure Section

418.10 (1994). *McCorkel v. City of Los Angeles*, 70 Cal.2d 252, 257, 74 Cal.Rptr. 389, 393 (1969) (based on former CCP § 416.3, now § 418.10). If a defendant declines to petition for writ of mandate after the denial of his motion to quash, his only available options are: (1) to answer the complaint, which constitutes a general appearance and waives the defendant's rights to challenge jurisdiction on appeal after a trial in the merits, or (2) to default to the complaint, appeal from the default judgment on the grounds of lack of personal jurisdiction, and thereby forego any opportunity to challenge the substance of the complaint. *McCorkel, supra,* at 258, 74 Cal.Rptr. at 394.

This petition is timely. California Code of Procedure Section 418.10 provides that after a denial of a motion to quash, the defendant may file a petition for writ of mandate within ten days of service of the notice of ruling, or within such further time, not exceed twenty days, allowed by the trial court. CCP § 418.10. The Respondent granted Petitioner two weeks additional time, to October 14, 1994, to file this petition. [*See* Goodman Decl., at ¶ 2, filed concurrently herewith]. The trial court is empowered to grant such an extension. *See, McIntire v. Superior Court (Kelly)*, (1975), 59 Cal.App.3d 717, 720, 125 Cal. Rptr. 379, 381. Therefore, this petition is timely.

B. The Consequences of the Trial Court's Ruling Are Grave, and Denial of Appellate Review Will Deny Due Process to Petitioner.

The Respondent Court's ruling has grave consequences because it effectively denies the Petitioner the opportunity to ever challenge the substance of the FAC in

order to preserve his jurisdictional objections. He must either default to the FAC, or file an answer and thereby make a general appearance. In either case, Petitioner would be compelled to forego his substantial rights to due process of law.

The legal significance of this ruling also justifies extraordinary relief. *See generally, Babb v. Superior Court (Huntington)*, (1971), 3 Cal.3d 841, 851, 92 Cal.Rptr. 179, 185. In the usual case, the denial of a motion to quash creates a grave and serious dilemma for the non-resident defendant who must either waive his jurisdictional objections or waive his right to challenge the substantive merits of the complaint against him. In this case, the denial is not only grave and serious for those reasons, but also because it is of substantial and widespread interest to the entire entertainment industry, in Southern California, as well as throughout this nation, and throughout the world. The Respondent Court's decision, if allowed to stand, will send significant and far-reaching shock waves through entertainment circles around the globe, and could lead to a constriction of Southern California's lucrative entertainment industry as out-of-state and foreign individuals and entities curtail their contacts with the State of California to avoid subjecting themselves to the jurisdiction of the courts of this State, in violation of the constitutional principles of Due Process.

III. AN EMERGENCY STAY OF ALL PROCEEDINGS AGAINST PETITIONER IN THE RESPONDENT COURT SHOULD BE GRANTED IN ORDER TO PRESERVE THE STATUS QUO IN THE TRIAL COURT AND TO AVOID IRREPARABLE HARM TO PETITIONER.

The general rule is that the perfecting of an appeal stays proceedings in the trial court on matters embraced therein or affected thereby. *Elsea v. Saberi*, (1992) 4 Cal.App.4th 625, 629, 5 Cal.Rptr. 2d 742, 744. This general rule also applies to interlocutory appeals and other appeals before final judgment. *In re Marriage of Horowitz*, (1984) 159 Cal.App. 3d 377, 386, 205 Cal.Rptr. 880, 887. The purpose of this rule is to preserve the *status quo* while the appeal is pending, and to prevent the trial court or the parties from rendering the appeal futile by subsequent actions or rulings. *Elsea, supra*, at 629, 5 Cal.Rptr.2d at 744. In this case, Petitioner is entitled to a stay of all proceeding embraced, or affected by, this petition for writ of mandate, including the recently noticed continuation of his deposition on substantive issues. Without a stay, this Petition could be rendered moot because Petitioner would have to chose between violating the trial court's order to appear for his deposition on substantive issues before this appeal is decided, where such an appearance would operate as a waiver of his jurisdictional objections, or violate the trial court's order and subject himself and his attorneys of record to sanctions for contempt.

On the day that Petitioner's Motion to Quash was denied, real parties-in-interest' counsel noticed the continuation of Petitioner's deposition on the minimum of ten days' notice [*See*, Notice of Continued Deposition,

Exhibit 52, p. 2538-2539]. Real parties-in-interest refused to take the deposition off-calendar while this appeal was pending. Petitioner's Counsel requested a stay of all proceedings from the trial court, but said request was denied, although the deposition was postponed until the week of October 17, 1994 (*i.e.*, the Monday after this Petition is to be filed with this Court). [*See* Goodman Decl., at ¶ 3, filed concurrently herewith]. Real parties-in-interest have now brought a motion for sanctions, seeking to compel Petitioner's attendance at a substantive deposition, whether or not this Court has ruled on this Petition. [*See* Goodman Decl., ¶ 4 and Exhibit "C" thereto, filed concurrently herewith]. Only a stay can prevent Petitioner from waiving his jurisdictional objections, or from violating a direct order of the Respondent Court.

IV. THE TRIAL COURT'S FINDING OF GENERAL JURISDICTION AND THE DENIAL OF THE MOTION TO QUASH VIOLATE DUE PROCESS AND ARE REVERSIBLE ERROR.

A. The Standard of Review is De Novo.

It is a question of law whether the defendant is subject to personal jurisdiction, and the trial court's determination should have no impact on the reviewing court. *See, Great-West Life Assurance Co. v. Guarantee Co.*, (1988) 205 Cal. App. 3d 199, 204, 252 Cal. Rptr. 363, 365. In *Great-West*, the parties did not dispute the basic facts, but only one another's characterization of those facts. *Id.* at 204, 252 Cal.Rptr. at 366. This District of the Court of Appeal conducted an independent review of the facts and determined that the trial court properly quashed service

of the summons for lack of specific personal jurisdiction. While the court determined that the defendant did not have sufficient minimum contacts, the court also stated that even if sufficient minimum contacts were found, the court still must evaluate the reasonableness of the exercise of jurisdiction in the particular case. *Id.* at 209, 252 Cal.Rptr. at 369. The *Great-West* court found that it would be unreasonable under the tests articulated in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-478, 105 S.Ct. 2174, 2185 (1985), and *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113, 107 S.Ct. 1026 (1987), to subject a Canadian insurance company to jurisdiction in California in a dispute with another Canadian insurance company. *Id.* at 209, 369.

In this case, the issues of law are: a) whether petitioner has sufficient contacts with the State of California to justify the exercise of general personal jurisdiction, and b) whether the Respondent Court's denial of Petitioner's motion to quash violates due process and the constitutional requirements of fair play and substantial justice. Based on a de novo review of the record, this Court should determine that Petitioner's contacts are insufficient as a matter of law, and that even if those contacts were sufficient, that the exercise of general personal jurisdiction in this case would violate the due process guarantees of fair play and substantial justice, which compels the courts of this state to decline to exercise general personal jurisdiction in this case.

B. In Order For There to be General Personal Jurisdiction Over Petitioner, Petitioner Must be Personally Doing Business in California on a Substantial, Continuous and Systematic Basis and the Exercise of Personal Jurisdiction Must Not Offend the Traditional Due Process Notions of Fair Play and Substantial Justice.

1. The Standards for General and Specific Jurisdiction.

A court can exercise personal jurisdiction over a nonresident defendant in one of five ways: (1) service on the defendant while physically present in the United States; (2) the defendant is domiciled in the state; (3) the defendant generally appears or consents to jurisdiction; (4) the defendant has such substantial and continuous contacts with the forum as to be considered present in the forum; or (5) the defendant has certain minimum contacts with the forum, and the causes of action in the complaint arise from those contacts. *See*, Comment, **Judicial Council**; "Bases of Judicial Jurisdiction," printed following C.C.P. § 410.10. The Respondent Court found that Petitioner had substantial and continuous contacts sufficient to constitute "presence" within the forum on the fourth factor.

If a defendant lacks sufficient ties for general jurisdiction, limited (or specific) jurisdiction may be found as to claims related to the defendant's activities or contacts *in the forum state* if three elements are established. These elements are: (1) the nonresident defendant must have done some act or consummated some transaction with the forum, or performed some act that purposely avails itself of the privilege of conducting activities in the forum

state; (2) real parties-in-interest' causes of action must arise out of or result from the nonresident defendant's forum-related activities; and (3) the forum's exercise of personal jurisdiction must be reasonable and comports with "fair play and substantial justice." *See, Burger King, supra,* at 477-478, 105 S.Ct. at 2185 (1985). Real parties-in-interest have conceded that the causes of action alleged in the FAC do not arise out of any of Petitioner's alleged activities in the forum state, and rely solely on the court's exercise of general jurisdiction.

Few cases discuss what activities within California are so "extensive, wide-ranging, substantial, continuous and systematic," as to allow the exercise of general jurisdiction, because the concept is rarely at issue. *See, e.g., Henderson v. Superior Court,* 77 Cal.App.3d 583, 590, 142 Cal.Rptr. 478, 482 (1978) (non-resident defendant did not have sufficient contacts with California for general jurisdiction where he owned horses that plaintiff trained and raced while she was in California). The Ninth Circuit has held that sending representatives to the forum state on business does not constitute "conducting business" in California and will not support an assertion of general jurisdiction. *See Rocke v. Canadian Automobile Sport Club,* 660 F.2d 395, 398 - 399 (9th Cir., 1981) (defendant racing association sent several representatives to races in California but conducted no racing activities there and such contacts were insufficient for general jurisdiction). Where the defendant's only contacts with the forum state were through its one-transaction relationship with the plaintiff, the contacts were not sufficient to justify general personal jurisdiction. *See, Hirsch v. Blue Shield of Kansas City,* 800 F.2d 1474, 1478 (9th Cir. 1986) (only limited jurisdiction

found based on contacts with plaintiff on transaction at issue in litigation).

The cases demonstrate that the alleged contacts relied upon by real parties-in-interest are completely insufficient. The evidence establishes that Petitioner never did any business in the State of California as an individual, much less any substantial, continuous or significant business. However, even if this Court were to consider all of the contacts that real parties-in-interest have alleged, those contacts would still be insufficient to establish general personal jurisdiction over Petitioner.

It is well-settled that each defendant's contacts with the forum state must be assessed individually. *Keeton v. Hustler Magazine*, 465 U.S. 770, 781, n. 13, 104 S.Ct. 1473, 1482, n. 13 (1984) (Citations omitted). The non-resident defendant's activities within the forum state must provide the basis for personal jurisdiction, and not the acts or conduct of the real parties-in-interest or others in the forum. *See, Floyd J. Harkness Co., Inc. v. Amezcua*, (1976) 60 Cal.App.3d 687, 691, 131 Cal.Rptr. 667, 670. In *Floyd*, the reviewing court affirmed the trial court ruling of no personal jurisdiction over a non-resident individual defendant whose only contacts with California were receiving money sent by plaintiff in California to defendant in another state, the promissory notes given in exchange for the funds were made payable to plaintiff in California, and the defendant participated in interstate telephone calls with plaintiff while plaintiff was in California. *Id.* at 691, Cal.Rptr. 669.

Corporate entities are treated differently in the evaluation of contacts sufficient to establish personal jurisdiction. Unlike an individual, the corporate "presence" in the forum state can be "manifested only by activities carried on in its behalf by those who are authorized to act for it." *International Shoe Co. v. State of Washington, et al.* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 158. The isolated activities of an agent of the corporation in a state are not enough to subject the corporation to jurisdiction for causes of action not arising from those acts of the agent. *Id.* at 317, 66 S.Ct. at 159. The individual, on the other hand, either acts for himself, or acts as an agent on behalf of some other entity. Petitioner's only contacts with the State of California identified in the Respondent Court's reasons were made as an agent of other corporate entities, not made on his own behalf, and no competent evidence to the contrary was submitted to the Respondent Court.

2. Petitioner is Not "Doing Business" Personally in California in a Substantial, Continuous and Systematic Manner Sufficient to Permit the Exercise of General Personal Jurisdiction.

An independent review of the facts will show that the sum total of these so-called jurisdictional facts is not enough to justify the Respondent Court's exercise of general personal jurisdiction over Petitioner. Real parties-in-interest are required to allege specific acts connecting the Petitioner with the forum. *See Reuber v. U.S.*, 750 F.2d 1039, 1050 (D.D.C. 1984). As a matter of law, none of the "facts" presented to the trial court demonstrate that the Petitioner personally conducted business in California in

a substantial, continuous and systematic manner. The Petitioner has not set foot in California since 1947. He has no businesses, telephones, addresses or bank accounts in California. [A. Salkind Decls., ¶¶ 2, 3, 4, 5, 6, 7, 10, 11, and 12, Exhibit 10, pp. 98-100; ¶¶ 3 and 4, Exhibit 37, p. 1713.] Petitioner did not distribute the videocassettes of the various motion pictures described in the opposition papers of real parties-in-interest. When he made telephone calls and entered into the guarantee and settlement agreements real parties-in-interest describe, he was always in Europe, never in California. [A. Salkind Decls., ¶¶ 2, 3, 4, 5, 6, 7, 10, 11, and 12, Exhibit 10, pp. 98-100; ¶¶ 3 and 4, Exhibit 37, p. 1713.] No evidence was presented to the trial court that would support a finding that Petitioner conducted any substantial business in California. The purported contacts in California are not sufficient for general personal jurisdiction over Petitioner. [*See* Salkind Decl., ¶¶ 15, 21, 28 Exhibit 37, pp. 1715-1716.]

The distribution and marketing of *Christopher Columbus* and other motion pictures by third party, independent entities is not attributable to Petitioner, for, under California law, sales and sales promotion within a state by independent non-exclusive sales representatives do not constitute sufficient contacts with the state to justify general personal jurisdiction. *See Sklar v. Princess Properties International, Ltd.*, 194 Cal.App.3d 1202, 1207, 240 Cal.Rptr. 102, 106 (1977). Real parties-in-interest do not dispute that *Christopher Columbus* was distributed by Warner Bros., and advertised on Warner's behalf, not Petitioner's. [*See* I. Salkind Decl., ¶ 14, Exhibit 29, pp. 578-579. Hoefler Decl., ¶ 10, Exhibit 39, p. 1735.]

Moreover, Petitioner did not present films in order specifically that they could be distributed, exhibited and advertised in the State of California, but rather he presented those films to a worldwide audience and worldwide market, of which California is but one, small part. Financial benefits that the defendant receives from a collateral relationship to the forum state do not constitute "doing substantial business" in the forum, and will not support the exercise of personal jurisdiction without some "constitutionally cognizable" contact with the forum state. *See, World-Wide Volkswagen Corp. v. Woodson,* (1980) 444 U.S. 286, 299, 100 S.Ct. 559, 568.

All of the above contacts are not sufficient to justify exercising general personal jurisdiction over Petitioner, because Petitioner's contacts are not so significant, as a matter of law, that he should be deemed "present" for all purposes in this State. Even if the acts alleged in the record below had been performed by Petitioner in his individual capacity, these acts are not of sufficient substance to hold Petitioner susceptible to the Respondent Court's exercise of general personal jurisdiction for all purposes, and for all causes of action, in a lawsuit that admittedly does not arise out of any allegedly forum-related activities of the Petitioner.

Nevertheless, the trial court concluded that Petitioner was doing business in a substantial, continuous and systematic way in the State of California, and stated five reasons supporting this conclusion. None of these five reasons, nor anything else in the record, support the legal conclusion of general personal jurisdiction over Petitioner for all purposes for claims that do not arise out of any of Petitioner's alleged contacts with the State of

California. Petitioner's contacts with the State of California, as set forth in the record in the court below, are insufficient to form the basis for general personal jurisdiction. Even if the contacts were properly characterized by the Respondent Court, those contacts, as a matter of law, are not the equivalent of petitioner personally conducting substantial, continuous and systematic business in the State of California.

a. The Exhibition, Distribution and Advertisement of Nine Films in California.

The trial court's first reason for finding general personal jurisdiction was that the Petitioner "has advertised, distributed and exhibited at least nine films in California." [Reporter's Transcript, at p. 14, Exhibit 51, p. 2529.] There is simply no evidence to support this reason.

Factual statements by the trial court that are not supported by evidence in the record cannot be relied upon by this Court. *Rivard v. Bd. of Pension Commissioners*, (1985) 164 Cal.App.3d 405, 413-414, 210 Cal.Rptr. 509, 514-515. The real parties-in-interest admit that Petitioner did not personally advertise, distribute and exhibit the motion pictures, stating that Petitioner "had" the pictures advertised [Real Parties-in-Interest's Opposition to Motion to Quash, at p. 4, Exhibit 22, p. 391], and acknowledging that Warner Bros. not Petitioner distributed the *Christopher Columbus*, the film that is the subject of the underlying lawsuit. [I. Salkind Decl., ¶ 14, Exhibit 29, pp. 578-579.] The advertisements submitted by real parties-in-interest do not establish who actually performed the

advertisement work, and Petitioner did not. [A. Salkind Decl., ¶ 2, Exhibit 37, p. 1713.] Petitioner did not personally license anyone to distribution or advertise the motion pictures because he did not own those motion pictures, separate corporate entities did.

Only non-resident defendant's personal activities in the forum state can provide the basis for personal jurisdiction over that defendant. *Cornell Univ. Medical College v. Superior Court (Fireman's Fund)*, (1978) 38 Cal.App.3d 311, 316, 113 Cal.Rptr. 291, 295. The plaintiff's contacts are not relevant [*Id.*, 113 Cal.Rptr. at 294] and cannot form the basis for jurisdiction over the non-resident defendant. *Belmont Industries, Inc. v. Superior Ct. (Viking Drafting, Inc.)*, (1973) 31 Cal.App.3d 281, 288, 107 Cal.Rptr. 237, 241. Thus, the acts of independent, third party, advertisers, distributors like Warner Bros., and exhibitors like Mann theaters and AMC theaters, cannot be jurisdictional facts sufficient to find general personal jurisdiction over Petitioner where he did not commit these acts in the forum state.

Furthermore, the trial court ignored the unmistakable and undisputed fact that each of the nine films was advertised, distributed and exhibited worldwide, not just in California. The next logical extension of the trial court's reasoning is that general personal jurisdiction can be exercised over Petitioner and other foreign motion picture presenters and producers virtually anywhere in the world. This conclusion is contrary to well-established principles of fair play, substantial justice and reason, as well as California's precedents which hold that where an insignificant amount of a defendant's total business is

conducted in California, general and even specific jurisdiction may not be found. *See e.g., Watson's Quality Turkey Products, Inc. v. Superior Ct. (Manor Poultry Co.)*, (1974) 37 Cal.App.3d 360, 367, 112 Cal.Rptr. 345, 349 (1% of nationwide turkey business conducted in California held insufficient for general personal jurisdiction); *and see Vibration Isolation Products, Inc. v. American National Rubber Co.*, (1972) 23 Cal.App.3d 480, 484, 100 Cal.Rptr. 269, 271 (corporate non-resident defendant's sale of less than $25,000 of its product to California customers over three-year period was insufficient for even limited personal jurisdiction over cause of action arising from the sale of product). Licensing motion pictures to third parties for distribution throughout the world is not sufficient to find personal jurisdiction over Petitioner in California. *Id.* Furthermore, even if the advertising and distribution contacts were determined to be conducted by Petitioner himself, the State of California, while a large motion picture market, is not an overwhelming percentage of the advertising, distribution and exhibition market worldwide, and marketing films alone does not constitute doing substantial business.

b. Contacts With a California Attorney.

The trial court's second reason was that Petitioner "maintains contacts with an entertainment transaction attorney in California." [Reporter's Transcript at p. 14, Exhibit 51, p. 2529.] The evidence presented on this issue does not support the trial court's reasoning that such contacts were made by Petitioner in his individual capacity. The evidence was a Declaration of Walter Teller, the

attorney, which listed telephone messages left by Petitioner. [*See* Teller Decl., ¶ 2, Exhibit 33, p. 1026.] In both Teller's and Petitioner's declarations, it was stated that in making those telephone calls, Petitioner was acting on behalf of Cantharus Productions, Christopher Columbus Productions, N.V., two limited liability corporate entities, and that Petitioner always called from outside of the United States. [*See* A. Salkind Decl., ¶ 28, Exhibit 37, p. 1716-1717; Teller Decl., ¶ 2, Exhibit 33, p. 1026.] In addition, most of the calls were telephone messages that did not result in conversations between Petitioner and Teller. [*See* A. Salkind Decl., ¶ 28, Exhibit 37, p. 1716-1717.] The only evidence presented on this issue is in direct conflict with the trial court's reason, no evidence supports the trial court's reason, and this Court should disregard it.

Furthermore, the fiduciary shield doctrine, which provides that nonresident defendants are not subject to jurisdiction if their conduct in a forum state was in a corporate capacity, should protect Petitioner from the court's assertion of personal jurisdiction based on those telephone calls. *See Taylor-Rush v. Multitech Corp.*, 217 Cal.App.3d 103, 115, 265 Cal.Rptr. 272, 278 (1990). Accordingly, the trial court erred in determining that Petitioner's telephone calls to the attorney for several corporations confer general personal jurisdiction over Petitioner.

Even if this Court determined that there was evidence to find that the Petitioner made these telephone calls on his individual behalf, those contacts alone are not sufficient to justify the exercise of general personal jurisdiction. A foreigner's out-of-state placement or receiving of telephone calls and mail to California are not activities

conducted within the state, and will not support a finding of even specific personal jurisdiction. *Tiffany Records, Inc. v. M.B. Krupp Distributors, Inc.*, (1969) 276 Cal.App.2d 610, 619, 81 Cal.Rptr. 320, 327. In *Floyd J. Harkness Co., Inc. v. Amezcua, supra,* the court also found that the acts of making telephone calls to California regarding performance of a contract executed, and to be performed, outside of California was not sufficient to invoke the benefits and protection of California laws, and was an insufficient basis for specific personal jurisdiction. *Floyd J. Harkness Co., supra,* 60 Cal.App.3d at 692. The *Floyd* Court further determined that:

> To hold that a foreign individual who engaged in international and interstate commerce has subjected himself to the judicial jurisdiction of California by the mere act of agreeing to pay off promissory notes made payable in California and executed as evidence of moneys advanced by a California resident would hinder interstate business, contrary to the best economic interest of California. Grounding jurisdiction upon such a shadowy connection would cause borrowers from outside California to quickly seek alternative sources of funds rather than borrow money from this state's lenders and thereby subject themselves to the jurisdiction of this state. *Id.* at 692-693 (Citation omitted).

As a matter of law, the Respondent Court's finding of general personal jurisdiction because of telephone calls is erroneous and unreasonable.

c. There is No Evidence that Petitioner Often Contacts People in California.

The trial court's third reason was that Petitioner "often contacts people in California – California residents in regards to . . . writers, directors, merchandising rights, et cetera." [Reporter's Transcript at pp. 14-15, Exhibit 51, pp. 2529-2530.] No competent evidence was presented on this issue to support a finding that Petitioner personally makes these alleged contacts. The only purported "evidence" is the argument of real parties-in-interest, which concedes that such contacts are made "through the conduct of authorized agents and representatives," not by Petitioner personally [Real Parties-in-Interest's Opposition, at p. 8, Exhibit 22, p. 395], and the incompetent, unfounded conclusory declarations of real parties-in-interest. [*See* Salkind Decl., ¶ 7-19, 24, 28, Exhibit 37, pp. 1714-1717, and *see* Simmonds Decl., ¶¶ 10-21, 27, 30, 33 and 38, Exhibit 30, pp. 3-13.] Appropriate evidentiary objections to these declarations were made, [*See* Salkind's Evidentiary Objections, Exhibit 40.], but no ruling was made by Respondent Court. Even if Petitioner in Europe made these contacts by telephone, facsimile and correspondence, these contacts are insufficient to justify the exercise of general personal jurisdiction over Petitioner.

d. There is No Evidence that Petitioner Contracted to be a Consultant for Warner Bros. in California.

The trial court's fourth reason is that Petitioner "contract[ed] in California to be a consultant for Warner Brothers." [Reporter's Transcript, at p. 15, Exhibit 51, p.

2530.] No evidence supports this reasoning. Real parties-in-interest' opposition merely argues that Petitioner "negotiated into [sic] a consulting agreement with Warner Bros. in or about August of 1993" [Real Parties-in-Interest's Opposition at p. 7, Exhibit 22, p. 394.] The supposedly supporting declaration of John Schulman of Warner Bros. merely attached an unsigned document without stating that the agreement was ever entered into or executed. Petitioner's declaration denies that any such agreement was ever made or executed. [A. Salkind Decl., ¶ 37, Exhibit 37, p. 1718.] Therefore, no evidence supports the trial court's fourth reason.

This Court must disregard this fourth reason for two additional reasons. First, merely entering into a contract with a California resident, where the contract is negotiated through interstate (or international) communications is consummated, and calls for performance, outside of the State, has been to held be insufficient to establish specific personal jurisdiction, and therefore cannot form the basis for general personal jurisdiction. *See Belmont, supra,* at 285, 107 Cal.Rptr. at 239. Secondly, only contacts existing prior to the acts giving rise to the complaint can be considered. *Farmers' Ins. Exchange v. Portage La Prairie Mutual Ins. Co.,* 907 F.2d 911, 913 (9th Cir. 1990). No evidence was presented that the acts giving rise to the complaint occurred as late as August, 1993, and the claims alleged in the FAC arose before this date. Therefore this so-called contact should not have been considered by the Respondent Court.

e. No Evidence Supports the Respondent Court's reasoning that Petitioner Conducted Business Through California Corporations.

The trial court's fifth reason was that Petitioner "conducted his production business through many corporations in California" and does "significant and continuous business as a motion picture producer within California." [Reporter's Transcript at p. 15, Exhibit 51, p. 2530.] No evidence supports this reason. There was no competent evidence submitted to the trial court to support its reasoning that Petitioner conducted his production business through many corporations in the State of California. None of the named corporate defendants are incorporated in, or have a place of business in, California. The trial court based its reason on the alleged fact that corporations with which Petitioner is alleged to have been affiliated hired individuals to render services or provide insurance for motion pictures produced for those companies outside of California. This is a misapplication of the relevant law, because each defendant's contacts must be assessed individually. No evidence was presented to support a conclusion that Petitioner personally conducted significant or any business in the State of California. The only competent evidence presented on this fact was that Petitioner made certain contacts, on behalf of Cantharus, Christopher Columbus Productions, N.V. or other corporations, not as an individual, and therefore these contacts cannot be imputed to him personally. [*See* A. Salkind Decl., ¶ 28, Exhibit 37, p. 1716-1717.]

The only other purported evidence is the incompetent declarations of real parties-in-interest, which properly should have been disregarded by the Respondent Court. Statements like real parties-in-interest' have been held to be insufficient to support an opposition to a motion to quash. *See e.g., Tiffany, supra,* at 620, 81 Cal.Rptr. at 328 (affidavit merely provides an opinion or conclusion, and is unacceptable proof of jurisdictional acts, even where uncontroverted, where affidavit states "it was obvious to me from noting the above devices used by [defendant] Powell that he had been acting as an instrument or agent of the individual distributors in the defrauding of our company to the mutual advantage of the distributor and Powell"). Real parties-in-interest argue that Petitioner "conducts his personal business affairs through numerous shell corporations . . . to hide various assets . . . through the subterfuge of purported corporate organizations." [Real parties-in-interest' Opposition, p. 9, Exhibit 22, p. 396; *and see* Simmonds Decl., ¶¶ 41, 42 and 44, Exhibit 30, pp. 13, 14, and 16; *and see* I. Salkind Decl., ¶¶ 31 and 32, Exhibit 29, p. 583.] But real parties-in-interest present no evidence to support these arguments nor to demonstrate that any contacts were made on behalf of Petitioner individually rather than on behalf of the corporate entities. Where an individual defendant has no personal business dealings on his own behalf in California, and defendant only contacted plaintiff in California in defendant's capacity as a corporate officer, such conduct is not sufficient to subject the individual to personal jurisdiction because the individual's only acts connected to the forum were on behalf of the corporation. *See, Shearer v. Superior Ct. (Thundervolt Corp.)*

(1977), 70 Cal.App.3d 424, 430, 138 Cal.Rptr. 824. It is the individual defendant's contacts with the forum, individually, that must be identified and analyzed to determine whether they support a finding of personal jurisdiction. *See, e.g., Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990) (jurisdictional contacts cannot be imputed from one defendant to another, and the *International Shoe* requirements must be met as to each defendant.) It is undisputed that the allegations in the FAC do not arise from activities conducted within the State of California. It is undisputed that no other defendants, corporate or individual, have appeared in this action.

Furthermore, on the issues presented in this case, it was inappropriate for the Respondent Court to rely on its fifth reason. It is also undisputed that corporations are separate legal entities, and are distinct from their shareholders, officers, directors, and beneficial owners. *Cooperman v. Unemployment Ins. Appeal Bd.*, (1975) 49 Cal. App. 3d 1, 7, 122 Cal.Rptr. 127, 131. One of the primary business reasons for forming a corporation is to limit personally liability, and for tax purposes. Thus, the liabilities of the corporation do not automatically attach to its officers, directors or shareholders, the owners of the corporation. *Wyatt v. Union Mortgage Co.*, (1979) 24 Cal.3d 773, 785, 157 Cal.Rptr. 392, 399. Where a corporation enters into a contract by or through its agent, the corporation will be liable on the contract and the agent will not. *See* generally, *Merco Construction Engineers, Inc. v. Municipal Ct. (Sully-Miller Contracting Co.)*, (1978) 21 Cal.3d 724, 729-730, 147 Cal.Rptr. 631, 634. In the absence of proof

that the alter ego doctrine should be applied to pierce the corporate veil[3], these general rules apply.

f. No Other Constitutionally Relevant Contacts Were Presented in Evidence to the Respondent Court to Support the Exercise of General Personal Jurisdiction Over Petitioner.

Real parties-in-interest identified two other alleged contacts of Petitioner with the forum state, but these so-called contacts properly were disregarded by the Respondent Court. Real parties-in-interest argue that Petitioner has been sued in the State of California, and entered into settlement agreements in those lawsuit [sic], where such settlement agreements applied California law, and could be enforced in California courts. However, it is well-settled that the settlement of lawsuits in the forum is not

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[3] Where the allegations of alter ego in a complaint are made on information and belief, the purported "facts" are hearsay and must be disregarded in the consideration of a motion to quash service, even when the complaint is verified. *See, Sheard v. Superior Ct. (Jarvis)*, (1974) 40 Cal.App.3d 207, 212, 114 Cal.Rptr. 743, 746 (writ granted directing respondent court to quash service of summons). In this case, the allegations of alter ego, such as they are, are made on information and belief, and the FAC is not verified. Statements made on information and belief will not sustain the burden of proof on a motion to quash. *See Shearer, supra*, at 430, 138 Cal.Rptr. at 828. Moreover, the alter ego allegations do not allege that Petitioner is liable as the alter ego of the various corporate defendants, but rather (and improperly) that the corporate defendants are liable as the alter ego of Petitioner, and therefore should not be considered in evaluating the sufficiency of Petitioner's jurisdiction of contacts. The FAC alleges that Petitioner entered into the alleged oral contracts personally.

relevant to the jurisdictional analysis. *See Core-Vent, supra,* at 1490. The real parties-in-interest further argued that the fact that Petitioner personally guaranteed performance of several agreements, while Petitioner was outside of the country, and where the agreements involved California residents, is a sufficient contact to justify general personal jurisdiction. The California courts have determined that merely guaranteeing performance of a contract with a party in the forum state in not sufficient to justify the exercise of general personal jurisdiction. *See, e.g., Mellon, supra,* at 1223. Accordingly, no additional contacts asserted by real parties-in-interest are sufficient to justify the exercise of general personal jurisdiction by Respondent Court.

3. The Trial Court Never Examined whether or not the Exercise of General Personal Jurisdiction Over Petitioner in this Case Offended Constitutionally Mandated Due Process Standards of Fair Play and Substantial Justice.

Even if this Court determines that the Respondent Court properly found sufficient contacts to justify the exercise of general jurisdiction over Petitioner, the Respondent Court's determination of general personal jurisdiction was reversible error because the Respondent Court failed to make the reasonableness analysis mandated by the United States Supreme Court. In every case, the state court's assertion of jurisdiction over an alien defendant "will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious

burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum state." *Asahi, supra,* at 115, 107 S.Ct. at 1034. This portion of the *Asahi* holding had the concurrence of a unanimous Supreme Court. Had the Respondent Court analyzed the reasonableness of its exercise of jurisdiction in light of *Asahi, supra,* it would have been compelled to decline to exercise general personal jurisdiction in this case. The Due Process Clause prohibits the exercise of personal jurisdiction over a non-resident defendant whenever that exercise of jurisdiction is unreasonable because it would offend traditional notions of fair play and substantial justice. *Id.* at 113, 107 S.Ct. at 1026, quoting *International Shoe, supra.*

It is clear that the demands of due process require the courts carefully to assess the reasonableness of subjecting a non-resident defendant to the jurisdiction of the California courts. In this case, the trial court erred as a matter of law by failing to make any analysis of the reasonableness, or lack thereof, of its finding of general personal jurisdiction over Petitioner. The Ninth Circuit recently has articulated the seven reasonableness factors to be considered. Under this analysis, the exercise of general personal jurisdiction over Petitioner is absolutely unreasonable. Those seven factors are: "(1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the

forum to the real parties-in-interests' interest in convenient and effective relief; and (7) the existence of an alternative forum." *Core-Vent Corp. v. Nobel Industries A.B., et al.*, 11 F.3d 1482, 1487 - 1488, 1490 (9th Cir. 1993); *See, also, Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1198 (9th Cir. 1988). The Respondent Court did not demonstrate that the exercise of jurisdiction would be reasonable and fair given the facts of this case.

First of all, Petitioner did not purposefully interject himself personally into California's markets. Second, the burden on Petitioner would be great given that he is not a U.S. citizen, has never lived in California, resides outside the United States, and he is unable to fly in airplanes, on doctor's orders. [*See* Salkind Decl. ¶¶ 2, 12, Exhibit 10, pp. 98, 100.] In evaluating the third factor, conflict with the sovereignty of the defendant's state, the court must consider the defendant's relationship with the United States in general. *Core-Vent, supra,* at 1489. Petitioner has no significant relationship with the United States. He has been sued here in a few other actions, has entered into settlement agreements on those lawsuits, and has guaranteed a few contracts with California residents; these actions are not sufficient to make the exercise of general jurisdiction "reasonable." This Court must be mindful of the *Asahi* court's warning that the "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi, supra,* at 114, 107 S.Ct. at 1033. In this case, the long arm would stretch over several international borders, and not one of them

has any constitutionally-significant relationship with the State of California.

The real parties-in-interest' and the forum's interests are greatly reduced when, as here, the real party-in-interest is not a resident of the forum state. *Id.* Where the real parties-in-interests' interest is slight (as here given that the real parties-in-interest are not residents of California), and the forum's interest in asserting jurisdiction is slight (given that none of the acts or harm are alleged to have occurred in California, and that none of real parties-in-interest nor Petitioner are California residents), the fourth factor weights against imposing jurisdiction over the Petitioner. In this case, the State of California has absolutely no interest in this litigation. The largest claim in the FAC is the oral contract claim of Chaplin. Chaplin's claim is for repayment of a loan, which loan was not alleged to have been made in the State of California, which was not to have been repaid in California, and which could only have been made, if at all, in Switzerland, to a European, from a Swiss citizen. The claims of Ilya and Simmonds are likewise unrelated to the State of California. Their claims basically amount to breach of oral employment contracts that they allege directly with Petitioner personally. The contracts were not made in California, were not to be performed in California, and were not alleged to have been breached in California. The logical extension of the Respondent Court's ruling is absolutely unreasonable that any employer can be sued for breach of the employment contract, in any jurisdiction that his employees so much as pass through.

As the pleadings now stand, only the attorneys have a connection with the forum state. Where the forum state

has no interest in the litigation and only the attorneys appear to be located there, it is unfair for the court to exercise personal jurisdiction. *See, e.g., Dalton v. R&W Marine, Inc.*, 897 F.2d 1359, 1363 (5th Cir. 1990).

Finally, real parties-in-interest bore the burden of proving the unavailability of an alternative forum, the seventh factor. *Core-Vent, supra*, at 1490 (citation omitted). Real parties-in-interest made no effort to meet their burden. This is not surprising. Given the nature of the dispute, and the various nationalities and domiciles of the parties, it is obvious that alternative forums exist for reconciling this dispute.

Based on all of the above factors, it would be improper, unreasonable, and would violate the notions of fair play and substantial justice to subject Petitioner to general personal jurisdiction in the courts of this State, exceeding the limits of the Due Process Clause of the United States Constitution.

4. Service of Process Was Never Effected on Petitioner, Where the Attempts at Service Violated Swiss Law, Failed to Conform With The California Long Arm Statute, And Were a Result of Fraud and Treachery.

The trial court further erred in summarily stating that service was proper. [Reporter's Transcript, p. 14, Exhibit 51, p. 2529.] In order to serve a defendant who is not present or domiciled within the forum state, the plaintiff must follow the procedures of the forum state's laws for extraterritorial service of process. California's statute requires that extraterritorial service be made in one of six

ways, none of which were effected here as to Salkind. The first four are personal, substitute, mail with acknowledgement of receipt, and publication. Cal. Code of Civ. Proc. § 417.20(c) (West, 1994). It is undisputed that Petitioner was not personally served initially; real parties-in-interest did not effectuate substitute service or service by publication, and did not include the requisite Notice of Acknowledgement of Receipt when they mailed the summons and complaint to an attorney in Switzerland. [*See* Domenig Decl., ¶ 4, Exhibit 11, p. 105.] Real parties-in-interest attempted the fifth method – by certified or registered mail with return receipt requested; however, service was not effected because real parties-in-interest' attempt violated Swiss criminal law. It is undisputed that Petitioner's Swiss counsel informed real parties-in-interest' counsel that he was unable to accept the Summons and Complaint by mail because to do so would be a violation of Swiss criminal law, and returned the summons and complaint with a letter of explanation. [*See* Domenig Decl., ¶¶ 3-8, Exhibit 11, pp. 104-108.]

In addition, real parties-in-interest did not comply with the sixth and final method: "in the manner prescribed by the law of the place where the person is served. . . . " Cal. Code of Civ. Pro. § 417.20(c) (West, 1994). As discussed above, real parties-in-interest have not effected service in a manner prescribed by Swiss law, because Switzerland prohibits service of process without following the proper diplomatic procedures. [*See* Domenig Decl., ¶¶ 6-9, Exhibit 11, pp. 106-108.] ***See also General Environmental Science Corp. v. Horsfall***, 753 F. Supp. 664, 672 (N.D. Ohio 1990) (service of process on Swiss defendant is properly executed by letters rogatory).

Thus, real parties-in-interest failed to comply with California's long-arm statute in initially attempting to serve Petitioner through the attorney in Switzerland.

Real parties-in-interest now asseri that they have properly served Petitioner personally at his jurisdiction-only deposition, which was conducted in Germany this past August. The Respondent Court specifically ordered that if Petitioner would appear for a deposition to be conducted in Germany, that appearance would not constitute a waiver of any of his jurisdictional objections, and real parties-in-interest' counsel agreed. When a defendant is tricked into a situation where plaintiff purports to effect service, fraud affects the jurisdiction and no jurisdiction will be found. *See, e.g., Wyman v. Newhouse*, 93 F.2d 313 (2d Cir., 1937) (cert. denied 303 U.S. 664, 58 S.Ct. 831). Furthermore, Mr. Berle's attempt to serve Mr. Salkind, a non-German citizen, in Germany, violates Article 5 of the Convention on the Service Award [sic] of Judicial and Extra Judicial Documents in Civil or Commercial Matters, Art. 5, N. 5, printed to [sic] following F.R.C.P. Rule 4 (1994). Documents [sic] which require that the designated Central Authority serve documents that are in German. Accordingly, there is no evidence to support the Respondent Court's determination that service was properly effected.

V. CONCLUSION

The facts remain that service of process was not properly effected and that Petitioner does not have substantial, continuous and systematic contacts with the State of California sufficient to justify an assertion of

general personal jurisdiction by the courts of this State. For the reasons detailed above, Petitioner Alexander Salkind respectfully requests that this Court grant this Petition for Writ of Mandate and direct the Respondent Court to enter an order quashing service of process.

DATED: October 13, 1994

Respectfully submitted,

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APPENDIX S

Supreme Court No. ___
2 Civil No. B087476
L.A. Superior Court Case No. BC093733
(Hon. Ricardo A. Torres)

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

ALEXANDER SALKIND, individually

Petitioner and Defendant,

vs.

SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,

Respondent,

JANE CHAPLIN, ILYA SALKIND
AND ROBERT SIMMONDS,

Real Parties in Interest.

PETITION FOR REVIEW INCLUDING
REQUEST FOR EMERGENCY STAY

Petition From Summary Denial of Petition For Writ of Mandate by The Court of Appeal Second Appellate District, Division Three
[In Civil Case No. B087476]

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STATUTES

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California Code of Civil Procedure Section 418.10 ..... 6, 8, 17

I. ISSUES PRESENTED FOR REVIEW

A. Does the Court of Appeal's summary denial of the Petition for Writ of Mandate and Request for Emergency Stay violate the due process clause of the United States Constitution and the California Constitution by denying any meaningful review, where the petition is the exclusive method for obtaining review of the trial court's order denying Petitioner's motion to quash service of process, without forever waiving Petitioner's ability to challenge the merits of the First Amended Complaint on substantive grounds?

B. Does the trial court's finding of general personal jurisdiction over Petitioner, which was based on the grounds that (a) Petitioner communicates with individuals in the State of California and that (b) Petitioner was the presenter of certain motion pictures advertised, shown and distributed worldwide (including within the State of California) by third parties, violate the due process clause of the United States Constitution and the California Constitution and the constitutional requirements of fair play and substantial justice?

C. Is Petitioner entitled to an emergency stay of proceedings in the trial court to preserve the status quo and to avoid any waiver of his due process rights during the time that this Honorable Court considers this Petition?

II. INTRODUCTION

This Court should grant review to examine a question that is of critical importance in the area of constitutional law: whether the summary denial of a petition for

writ of mandate is a denial of due process under the United States Constitution and the California Constitution, where the writ of mandate is the only means of obtaining appellate review of the trial court's finding of personal jurisdiction over a non-resident defendant. Like hanging up on a 911 caller as soon as the caller says "help," the Court of Appeal cut off Petitioner's ability to appeal the trial court's denial of his Motion to Quash Service for Lack of Personal Jurisdiction and Insufficient Service of Process (hereinafter, the "Motion") without waiving his right to challenge the substantive merits of the First Amended Complaint ("Complaint"). Granting this Petition for Review (hereinafter "this Petition") is the only way to preserve Petitioner's constitutional rights to due process of law in his defense of this lawsuit. An emergency stay, while this Court considers this Petition, also is necessary to preserve Petitioner's rights to substantive and procedural due process.

A second important question of law which supports a grant of review by this Court is the need for a uniform standard for application by the California courts of the United States Supreme Court's "substantial, continuous, and systematic" contacts test for determining when the courts can find general personal jurisdiction over non-resident defendants. Like pornography, trial judges claim to "know it when they see it," but there is no discernible standard in the reported decisions of California courts for identifying what actual contacts are sufficient to meet the test for general jurisdiction, or for determining whether the courts must make an analysis of the reasonableness of the exercise of jurisdiction in every case.

Accordingly, Petitioner respectfully requests that this Court grant review of this Petition and immediately issue an emergency stay.

III. NATURE OF THE CASE AND PROCEDURAL HISTORY

A. Parties.

Petitioner is one of the defendants in Civil Action No. BC 093733 (hereinafter the "Subject Action"), now pending in the trial court, entitled *Jane Chaplin, et al., Plaintiffs, vs. Alexander Salkind, an Individual, et al., Defendants*. The real parties-in-interest are Jane Chaplin ("Chaplin"), an individual, Ilya Salkind ("Ilya"), an individual and the son of Petitioner, and Robert Simmonds ("Simmonds"), an individual. All real parties-in-interest are citizens of countries other than the United States and, to the best of Petitioner's knowledge, currently reside in Florida, although real party-in-interest Chaplin is also a registered domiciliary of Vevey, Switzerland.

B. The Subject Action.

The Subject Action names thirty-six defendants in addition to Petitioner. Not one of those defendants has yet generally appeared in the Subject Action, despite the fact that it was originally filed in the trial court in November, 1993. All of the nine individual defendants are non-U.S. citizens and non-residents of the United States or any state or territory thereof. Of the twenty-seven corporate defendants, only four are incorporated in the United States, and none of them are incorporated in California.

In November, 1993, real parties-in-interest filed a Complaint in the trial court against this Petitioner as defendant in the Subject Action for damages arising from the alleged breach of separate oral agreements, which are alleged in the Complaint, upon "information and belief," to have been entered into by Petitioner personally with each of the real parties-in-interest. The Complaint further alleges that each of those three oral agreements have been breached by Petitioner personally, and that Petitioner fraudulently induced each of the three real parties-in-interest to enter into those oral agreements with Petitioner without any intention of performing those alleged oral agreements. The alleged oral agreement with real party-in-interest Chaplin is for a loan made to Petitioner for use in the financing of the motion picture *Christopher Columbus: The Discovery* (hereinafter *Christopher Columbus*); the alleged oral agreements between Petitioner personally and real party-in-interest Ilya, and real party-in-interest Simmonds, were two separate employment contracts whereby Petitioner allegedly personally agreed to pay certain sums, and to reimburse certain sums, to real party-in-interest Ilya and real party-in-interest Simmonds in connection with their services rendered for the production of *Christopher Columbus*.

None of these alleged oral agreements are alleged to have been made in California. If any agreements were made, they were made in Switzerland and France. None of the oral agreements are alleged to have been breached in California. California law does not apply to the causes of action alleged. The laws of Switzerland and France will apply to those claims. It is undisputed that neither Petitioner nor any of the real parties-in-interest have ever

resided in California. Petitioner is not a citizen of the United States and resides outside of the United States and has not been in California personally since December 1947. None of the real parties-in-interest are American citizens; they reside in Florida. The motion picture *Christopher Columbus* (a) was not produced or filmed in California; (b) was not filmed anywhere in the United States; (c) is owned by a non-United States company; and (d) has a Certificate of Origination issued by the British Department of National Heritage certifying the film as a United Kingdom Film.

C. Petitioner's Motion to Quash Service.

Petitioner has not made a general appearance in the trial court. On May 19, 1994,[1] Petitioner appeared specially in the trial court and, pursuant to the provisions of Section 418.10(a) of the California Code of Civil Procedure, moved for an order quashing service of the summons and dismissing the action on the grounds that the

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[1] The delay between the purported service of process upon Petitioner and the filing of Petitioner's Motion to Quash Summons and to Dismiss is explained by the fact that the subject action had been removed timely to the United States District Court for the Central District of California, and was subsequently remanded, after real parties-in-interest dismissed their federal [RICO] claim that had been originally included in the Complaint filed in November, 1993. Plaintiffs dismissed the RICO claim by filing the First Amended Complaint on January 7, 1994, which merely deleted the cause of action that had previously alleged the federal RICO claim. The action was ultimately remanded to the Respondent Court on April 14, 1994, and Petitioner's Motion to Quash Service of Process thereafter was timely filed.

court lacked personal jurisdiction over the person of Petitioner, and that service of process had not been properly completed upon Petitioner. The trial court denied Petitioner's motion on September 21, 1994, and a true and correct copy of the trial court's order is attached to this Petition as Exhibit "A."

D. The Trial Court's Reasons for Denying the Motion.

The trial court merely recited five reasons for its denial of the Motion and its assertion of general jurisdiction over Petitioner. The writ petition detailed why those reasons were both legally and factually insufficient to find general jurisdiction over the person of Petitioner under the United States Constitution's due process clause and California Code of Civil Procedure Section 410.10. The trial court's given reasons are as follows: (1) Petitioner personally advertised and distributed nine motion pictures in California; (2) Petitioner was in constant contact with his entertainment attorney in California; (3) Petitioner often contacts writers and other entertainment people in California; (4) after the claims asserted in the Complaint arose, Petitioner entered into an agreement to render personal services as a consultant to Warner Bros.; and (5) Petitioner conducted significant continuous business in California through non-California corporations. The trial court further determined that service had been effected properly upon Petitioner.[2]

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[2] All of the above contacts are not sufficient to justify exercising general personal jurisdiction over Petitioner, because

E. The Court of Appeal's Summary Denial.

On October 14, 1994, Petitioner timely filed a Petition for Writ of Mandate and Request for an Emergency Stay. On October 25, 1994, the Court of Appeal, Second Appellate District, Third Division, summarily denied the Petition. A true and correct copy of the Order denying the Petition is attached to this Petition as Exhibit "B."

IV. WHY REVIEW SHOULD BE GRANTED

A. The Supreme Court Must Grant Review Of This Petition To Settle an Important And Fundamental Question Of Constitutional Law.

The first question of law is whether a summary denial of a writ petition, which is the exclusive method for obtaining review of an order denying a motion to quash, denies Petitioner due process under the United States and State of California Constitutions. The Court of Appeal summarily denied the Petition for Writ of Mandate and the Request for an Emergency Stay, without considering or evaluating the constitutional significance

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Petitioner's contacts are not so significant, as a matter of law, that he should be deemed "present" for all purposes in this State. Even if the acts alleged in the record below had been performed by Petitioner in his individual capacity, these acts are not of sufficient substance to hold Petitioner to the trial court's exercise of general personal jurisdiction for all purposes, and for all causes of action, in a lawsuit that admittedly does not arise out of any allegedly forum-related activities of the Petitioner. Nevertheless, the trial court improperly concluded that Petitioner was doing business in a substantial, continuous and systematic way in the State of California.

of Petitioner's request. The Petition for Writ of Mandate is the exclusive means for obtaining review of the trial court's order denying Petitioner's motion to quash service. California Code of Civil Procedure Section 418.10 (1994). *See, also, McCorkel v. City of Los Angeles,* 70 Cal.2d 252, 257, 74 Cal.Rptr. 389, 393 (1969) (based on former Code of Civil Procedure § 416.3, now § 418.10). It was unreasonable for the Court of Appeal to deny review of the Petition and effectively force Petitioner to default on claims alleging damages in excess of Eight Million Dollars, or to continue litigating the case, at great expense, in a jurisdiction thousands of miles from his residence, when personal jurisdiction is disputed and no review has been granted. *See, generally, Hogya v. Superior Court (National Meat Packers, Inc.),* 75 Cal.App.3d 122, 129, 142 Cal.Rptr. 325, 330 (1978) (appeal from final judgment is not a practical remedy where expense of proceeding to trial is "grossly disproportionate" to Petitioner's expected recovery, so Court of Appeal must accept writ petition for review).

There is a compelling reason for this Court to review the Court of Appeal's summary denial of the Writ Petition, where, as here, the Court of Appeal's ruling effectively denies Petitioner the opportunity to defend the action without waiving his jurisdictional objections by making a general appearance. While courts are reluctant to review rulings in the pleading stage of litigation, such extraordinary relief is appropriate where the trial court's ruling prevents the Petitioner from prosecuting or defending a substantial portion of his claim. *Brandt v. Superior Ct. (Standard Ins. Co.),* 37 Cal.App.3d 813, 816,

210 Cal.Rptr. 211, 213 (1985). The Court of Appeal's summary denial effectively forbids the Petitioner from ever challenging the substance of the Complaint, if he wishes to preserve his jurisdictional objections.

If a defendant declines to petition for a writ of mandate after the denial of his motion to quash, or fails to appeal the denial of such a petition, his only available options are: (1) to answer or demur to the complaint, either of which constitutes a general appearance and operates to waive the defendant's due process rights to challenge the court's personal jurisdiction on appeal after the conclusion of a trial in the merits; or (2) to default to the complaint and appeal from the default judgment, where the appeal is limited to arguing lack of personal jurisdiction, thereby relinquishing any opportunity to challenge the substance of the complaint on the merits. *McCorkel, supra,* at 258, 74 Cal.Rptr. at 394.

In either case, Petitioner would be compelled to forego his substantial rights to due process of law. It is a denial of due process for the Court of Appeal to summarily deny the Petition, and thereby to require Petitioner to choose between either (a) waiving his right to object to the trial court's exercise of general personal jurisdiction over Petitioner, or (b) waiving his right to challenge the substantive merits of the Complaint, which seeks in excess of Eight Million Dollars in compensatory damages (in addition to punitive damages), by compelling him to default to the Complaint.

In this case, unlike in *Hogya*, the Petitioner cannot even continue to litigate the case and appeal later unless he decides to waive significant constitutional rights,

namely his right to contest personal jurisdiction. Where a later appeal cannot redress the harm Petitioner will suffer, extraordinary relief is warranted. *See Omaha Indemnity Co. v. Superior Ct. (Greinke)*, 209 Cal.App.3d 1266, 1274, 258 Cal.Rptr. 66 (1989). If this Court does not grant review, Petitioner will suffer harm that cannot be corrected on appeal, since he will be denied the opportunity to ever challenge the substance of the Complaint if he wants to preserve his jurisdictional objections. If he maintains his jurisdictional objections, and loses an appeal after default, he may be liable for more than Eight Million Dollars in compensatory damages, in addition to punitive damages in an unspecified amount. Petitioner is wedged between the proverbial "rock and a hard place." For these reasons, the grant of review is necessary to settle the important constitutional issues raised by the trial court's order denying the Motion.

B. A Grant Of Review By The Supreme Court Is Also Warranted Where, As Here, Existing California Case Law on The Important Issue of Personal Jurisdiction, Is Unsettled.

In the usual case, as described above, the denial of a motion to quash creates a serious dilemma for the nonresident defendant who must either waive his jurisdictional objections or waive his right to challenge the substantive merits of the complaint against him. In this case, however, the denial is not only grave and serious for those reasons, as described above, but also because it is of substantial and widespread legal significance in the entire entertainment industry, in Southern California, as well as throughout this state, and throughout the world.

The trial court's decision, if allowed to stand, will send violent and far-reaching shock waves through entertainment circles around the globe, and could lead to a constriction of Southern California's lucrative entertainment industry as out-of-state and foreign individuals and entities curtail their personal and business contacts with the entertainment industry's movers and shakers in California to avoid subjecting themselves to the jurisdiction of the courts of this state, where the exercise of such jurisdiction is unreasonable and violates the constitutional principles of Due Process.

This Court must set a standard for determining, as a matter of law, the quality and quantity of contacts with the State of California that are necessary to support the exercise of general personal jurisdiction over a non-resident, individual defendant. The trial court found *general* personal jurisdiction over Petitioner based not on Petitioner's actions in the State of California, but rather the acts of others, including an attorney, and various motion picture advertisers and distributors, like Warner Bros., and even the actions of corporations, notwithstanding the fact that no evidence was presented that the attorney represented Petitioner, as an individual, or that Petitioner himself conducted *any* of his personal business in the State of California.

Few reported cases discuss what activities within California are so "extensive, wide-ranging, substantial, continuous and systematic," as to allow the exercise of general personal jurisdiction. *See, e.g., Henderson v. Superior Court*, 77 Cal.App.3d 583, 590, 142 Cal.Rptr. 478, 482 (1978) (non-resident defendant did not have sufficient contacts with California for general jurisdiction where he

owned horses that plaintiff trained and raced while she was in California). Court opinions usually decide, without much discussion, that general personal jurisdiction obviously does not exist, and proceed to examine the specific jurisdiction factors. *Id.* Thus it is imperative that this Court grant review to settle the constitutionally significant question of what contacts are sufficiently "substantial," "continuous," and "systematic" to support the trial court's exercise of general personal jurisdiction over a non-resident defendant.

Petitioner, a non-U.S. citizen and a non-U.S. resident, has been involved in the production and creation of numerous motion pictures, some of which have been distributed and exhibited by third parties in the United States and in the State of California. However, in all instances, Petitioner has not owned those motion pictures and has not personally distributed, exhibited or advertised those motion pictures in California or in the United States. If France were to exercise general, personal jurisdiction over Steven Spielberg, a United States citizen, because *Schindler's List* had been exhibited and distributed in France by a French distributor, that conduct would offend all notions of fairness and substantial justice. If Stanley Kubrick, a British citizen, was subjected to personal, general jurisdiction in California merely because "2001" and "A Clockwork Orange" were exhibited by California companies in California, and because California residents performed services for those films, due process notions would be equally offended. The same result should occur in the instant case.

Furthermore, this Court must grant review to settle the important constitutional question of the extent to

which a trial court can find general personal jurisdiction without evaluating whether the exercise of general personal jurisdiction in the particular case would violate the United States Supreme Court's holding in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113, 107 S.Ct. 1026, 1033 (1987) that the due process guarantees of fair play and substantial justice compel courts to decline to exercise general personal jurisdiction in cases where to do so would be unreasonable. The exercise of jurisdiction is unreasonable where it offends "traditional notions of fair play and substantial justice." *Asahi, supra*, 480 U.S. at 113, 107 S.Ct. at 1033. The trial court failed to make any analysis of this constitutionally-mandated standard. When applying long-arm jurisdiction statutes to a foreign national, the United States Supreme Court has instructed that "the unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi, supra*, at 114, 107 S.Ct. at 1033. The trial court apparently did not consider the burdens of imposing jurisdiction on a foreign national, and failed to apply the "fair play and substantial justice" standard or any of the required elements.

In every case, the state court's assertion of jurisdiction over an alien defendant "will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum state." *Asahi, supra*, at 115, 107 S.Ct. at 1034. This portion of the *Asahi* holding had the concurrence of

a unanimous Supreme Court. Had the trial court analyzed the reasonableness of its exercise of jurisdiction in light of *Asahi*, it should have been compelled to decline to exercise general personal jurisdiction in this case. The Due Process Clause prohibits the exercise of personal jurisdiction over a non-resident defendant whenever that exercise of jurisdiction is unreasonable because it would offend traditional notions of fair play and substantial justice. *Id.* at 113, 107 S.Ct. at 1026, quoting *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945).

It is clear that the demands of due process require the courts to carefully assess the reasonableness of subjecting a non-resident defendant to the jurisdiction of the California courts. The Ninth Circuit has recently articulated the seven reasonableness factors to be considered. Those seven factors are:

> (1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the real parties-in-interests' interest in convenient and effective relief; and (7) the existence of an alternative forum.

See, Core-Vent Corp. v. Nobel Industries A.B., et al., 11 F.3d 1482, 1487 - 1488, 1490 (9th Cir. 1993); *See also, Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 119 [sic] (9th Cir. 1988). The trial court did not demonstrate that the

exercise of jurisdiction would be reasonable and fair given the facts of this case and these seven critical factors.

An analysis of these factors would demonstrate that it is not reasonable nor fair. Petitioner did not purposefully interject himself personally into California's markets. The burden on Petitioner would be great given that he is not a U.S. citizen, has never lived in California, resides outside the United States, and he is unable to fly in airplanes, on doctor's orders. Moreover, the California court will be required to apply the laws of France and Switzerland to the substantive issues. California has no interest in adjudicating this dispute. Real parties-in-interest and Petitioner are not residents of California; none of the acts or harm are alleged to have occurred in California; the law of California does not apply to the dispute, but the laws of other states as well as the laws of Switzerland and France do. Given the nature of the claims, and the various nationalities and domiciles of the parties, it is obvious that alternative forums exist for reconciling this dispute.

C. Petitioner Should be Granted an Emergency Stay to Preserve His Rights.

This Court must grant an emergency stay immediately. Otherwise, Petitioner will be compelled to choose between either violating orders of the trial court to respond to the Complaint and to appear for his deposition on substantive issues, thereby subjecting himself and his counsel to the entry of default and sanctions, or obeying the trial court's orders and forever waiving his objections to the jurisdiction of the California courts, thus

rendering his appeal moot before this Court rules on this Petition.

The general rule is that the perfecting of an appeal stays proceedings in the trial court on matters embraced therein or affected thereby. *Elsea v. Saberi*, 4 Cal.App.4th 625, 629, 5 Cal.Rptr. 2d 742, 744 (1992). This general rule also applies to interlocutory appeals and other appeals before final judgment. *In re Marriage of Horowitz*, 159 Cal.App. 3d 377, 386, 205 Cal.Rptr. 880, 887 (1984). The purpose of this rule is to preserve the *status quo* while the appeal is pending, and to prevent the trial court or the parties from rendering the appeal futile by subsequent actions or rulings. *Elsea, supra*, at 629, 5 Cal.Rptr.2d at 744. In this case, Petitioner is entitled to a stay of all proceeding embraced, or affected by, this Petition for Review, including the continuation of his deposition on substantive issues, and his time to respond to the Complaint.

The California Code of Civil Procedure, Section 418.10, provides that the defendant's time to answer the complaint is continued until ten days after an order denying the defendant's petition for writ of mandate. The obvious purpose of this Civil Code section is to prevent the defendant from waiving his jurisdictional objections by answering the complaint while his petition is pending. However, the statute does not specifically provide for a stay of other proceedings, like the defendant's deposition. In this case, the purpose of the Code of Civil Procedure section 418.10 would be violated if this Court does not grant a stay as to the proceedings against Mr. Salkind. Petitioner believes that he is entitled to an automatic stay. However, in the event that the filing of this Petition does

not automatically stay all proceedings against Petitioner in the trial court, Petitioner respectfully requests that this Court immediately issue an order granting an emergency stay.

On the day that Petitioner's Motion to Quash was denied, real parties-in-interest's counsel noticed the continuation of Petitioner's deposition on the minimum of ten days' notice. Real parties-in-interest refused to take the deposition off-calendar while the appeal was pending. Petitioner's counsel requested a stay of all proceedings from the trial court, but said request was denied, although the deposition was postponed until thirty days after the Court of Appeal's ruling denying the petition. Only an immediate stay can prevent Petitioner from waiving his jurisdictional objections or from violating a direct order of the trial court.

Without a stay, this Petition could be rendered moot because Petitioner would have to either violate the trial court's order to respond to the Complaint and appear for his deposition on substantive issues before this Petition is decided, where the answer would constitute a general appearance, and his appearance at the deposition would operate as a waiver of his jurisdictional objections, or violate the trial court's order, thereby subjecting himself and his attorneys of record to sanctions for contempt, at a minimum, and perhaps even a default judgment. Based on the legal significance of the questions of law submitted for review, this Court must grant Petitioner's request for an emergency stay, for otherwise he will be denied due process of law which "limits the power of a state court to exert personal jurisdiction over a non-resident defendant." *Asahi, supra,* at 108, 107 S.Ct. at 1030.

V. CONCLUSION

An immediate emergency stay must be granted to preserve the status quo while this Court considers this Petition and to permit Petitioner the opportunity to preserve his due process rights to maintain his jurisdictional objections without waiving his right to challenge the substantive merits of the First Amended Complaint. Review is appropriate and crucial in this case to settle two important questions of constitutional law: (1) whether the summary denial of a petition for writ of mandate violates due process where the petition is the exclusive method of obtaining review of the trial court's denial of a motion to quash service without waiver of one's substantive rights, and (2) what is the appropriate standard for determining whether a non-resident defendant's contacts with the State of California are sufficient to support the court's reasonable exercise of general personal jurisdiction. For all of the foregoing reasons, Petitioner respectfully requests that this Court grant review of the decision of the Court of Appeal summarily denying Petitioner's Petition for Writ of Mandate from the trial court's September 21, 1994, order denying Petitioner's Motion to Quash Service for lack of personal jurisdiction and insufficient service of process, or in the alternative, grant review and transfer this matter to the Court of

Appeal with directions to issue an alternative writ of mandate.

DATED: November 4, 1994

Respectfully submitted,

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APPENDIX T

A. United States Constitution Amendment 5, § 1: Due Process: "No persons shall . . . be deprived of life, liberty, or property, without due process of law."

B. United States Constitution Amendment 14, § 1: Due Process:

"No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . "

C. United States Constitution Amendment 14 § 1: Equal Protection:

"No state shall . . . deny to any person within its jurisdiction the Equal Protection of the laws."

D. 28 U.S.C. § 2403(b): Certification to Attorney General:

"(b) In any action, suit or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

E. California Code of Civil Procedure, § 418.10:

"(a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion * * *

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

* * *

(c) If the motion is denied by the trial court, the defendant, within 10 days after service upon him or her of a written notice of entry of an order of the court denying his or her motion, or within any further time not exceeding 20 days that the trial court may for good cause allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or staying or dismissing the action. The defendant shall file or enter his or her responsive pleading in the trial court within the time prescribed by subdivision (b) unless, on or before the last day of the adverse party and files with the trial court a notice that he or she has petitioned for a writ of mandate. The service and filing of the notice shall extend the defendant's time to plead until 10 days after service upon him or her of a written notice of the final judgment in the mandate proceeding. The time to plead may for good cause shown be extended by the trial court for an additional period not exceeding 20 days."

F. California Code of Civil Procedure, § 410.10:

"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

G. California Code of Civil Procedure, § 904.1(a):

"(a) An appeal may be taken from a superior court in the following cases:

(1) From a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), (B) a judgment of contempt which is made final and conclusive by Section 1222, (C) a judgment on appeal from a municipal court or a justice court or a small claims court, or (D) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(2) From an order made after a judgment made appealable by paragraph (1).

(3) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(4) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(5) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(7) From an order appointing a receiver.

(8) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(9) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(10) From an order made appealable by the provisions of the Probate code or the Family Code.

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)."

H. California Code of Civil Procedure § 906:

"Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the

judgment or order appealed from or which substantially affects the rights of a party, including, on any appeal from the judgment, any order on motion for a new trial, and may affirm, reverse or modify any judgment or order appealed from and may direct the proper judgment or order to be entered, and may, if necessary or proper, direct a new trial or further proceedings to be had. The respondent, or party in whose favor the judgment was given, may, without appealing from such judgment, request the reviewing court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken. The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken."